

# TRAFFIC ENFORCEMENT

POLICY & PROCEDURE NO. <b>5.01</b>	ISSUE DATE: 10/05/15
	EFFECTIVE DATE: 11/04/15
HADLEY POLICE DEPARTMENT	LAST REVIEWED DATE: 02/13/2019

## I. GENERAL CONSIDERATIONS AND GUIDELINES

Traffic enforcement, education and engineering are elements of an overall traffic safety program to promote the safe, efficient, and orderly movement of motor vehicles over the roads and highways in each community. Enforcement and education programs are designed to change illegal and dangerous driving behavior and to promote voluntary compliance with the laws of the Commonwealth.

As a component of behavior modification, enforcement must be applied where it can best target the type of driving behavior that needs to be affected. Through the use of collision statistics, traffic patterns and volumes, police can target the times and locations where enforcement resources will do the most good.

Traffic enforcement operations pose a number of challenges to officers. One of these is determining the appropriate officer safety precautions that should be taken in circumstances where little, if anything, is known about the operator and/or passengers prior to the stop. Another is determining the appropriate enforcement response necessary to modify driving behavior. Some of these contacts may result in citizen complaints being filed against officers. It is important that officers conduct themselves in a professional manner at all times during traffic stops. Officers should always be certain they have at least a reasonable suspicion of criminal conduct, or a motor vehicle violation, before initiating a motor vehicle stop.

## II. POLICY

It is the policy of this department to:

- A. Use traffic enforcement as one of several methods to reduce traffic collisions, fatalities, and injuries;
- B. Make motor vehicle stops based solely on the violations observed, not on the profile of the vehicle's occupants; and
- C. Maintain and account for traffic records and citations.

### III. DEFINITIONS

- A. **TRAFFIC ENFORCEMENT SUPERVISOR OR OIC:** A Supervisor or OIC assigned by the Chief of Police to coordinate traffic enforcement efforts by this department, or a supervisor or OIC in charge of any particular shift.

### IV. PROCEDURES

#### A. Traffic Enforcement

##### 1. GENERALLY

- a. The objective of traffic enforcement is to favorably alter the violator's future driving behavior, fostering a climate of safe driving throughout the community.
  - b. Officer performance appraisals shall not be based solely upon the number of traffic citations issued. The quality of the citations, i.e., accidents and injury-causing types of violations, quality of citizen contacts, and other elements will also be considered in an overall evaluation. Citation volume will only be one of the evaluation components.
  - c. Preferential treatment pertaining to adjudication of traffic cases in any manner by any agency, official, or person is prohibited.
  - d. Enforcement activities will be conducted in a consistent and uniform manner and will not give preference to either local residents or non-residents.
  - e. **PROFILING PROHIBITED:** Racial, age, gender, and any other type of profiling is strictly prohibited as a justification for any police officer to conduct any type of stop or seizure of a citizen. Traffic enforcement shall be based solely on the basis of the violation observed and not the profile of the operator and/or occupants. See the department policy on **Racial Profiling**.
  - f. Unmarked vehicles may be used when overt enforcement efforts have proven ineffective, where specific violations must be addressed (such as passing school buses, speeding vehicles, stop sign violations, etc.) and when authorized by a Supervisor or OIC.
2. **PATROL ENFORCEMENT MEASURES:** Patrol officers are responsible for traffic enforcement efforts during their normal tour of duty. Officers should:
- a. Take action against observed violations during normal patrols;

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- b. Direct enforcement activities at violations that negatively affect the officers' patrol area;
  - c. Augment the efforts of officers assigned to traffic duties; and
  - d. Enforce traffic laws at a level sufficient to ensure the safe and expeditious movement of traffic.
3. SELECTIVE ENFORCEMENT
- a. Identifying Enforcement Locations (may be performed at the discretion of the on duty supervisor, operational supervisor or Chief of Police in the following manners)
    - 1) The traffic enforcement Supervisor or OIC shall regularly review and analyze collision data generated through citizen reporting and officers' investigations. [61.1.1(a)]
    - 2) The Supervisor or OIC shall regularly review and analyze enforcement activity records, traffic volume, citizen complaints and traffic conditions.[61.1.1(b)]
    - 3) Using such data and analysis, the Supervisor or OIC shall identify selective enforcement locations, times and violations for enforcement efforts. [61.1.1(c)]
    - 4) The Supervisor or OIC will communicate such target locations and violations for selective enforcement activities.
  - b. Selective Enforcement Strategy Implementation
    - 1) The traffic enforcement Supervisor or OIC will identify education and enforcement strategies for each target area, such as: [61.1.1(d)]
      - a) Speed boards;
      - b) Radar and LIDAR;
      - c) Unmarked vehicles;
      - d) Enforcement teams.
    - 2) The Supervisor or OIC shall coordinate the deployment of dedicated traffic officers, as well as patrol officer, with shift Supervisor or OICs. [61.1.1(e)]
    - 3) Enforcement officers should target the violations specified by the selective enforcement assignment. However, other dangers or blatant violations should also receive the attention of these officers.
  - c. Evaluation: The traffic enforcement Supervisor or OIC shall compare pre- and post-enforcement levels of accidents, violations, and citizen complaints to evaluate the effectiveness of selective traffic enforcement efforts. [61.1.1(f)]

**B. Motor Vehicle Stops [61.1.7(a)(b)]**

1. CAUTION: If a determination is made to stop a motor vehicle, great care must be exercised. Many officers have been seriously or fatally injured making vehicle stops. Traffic violators, suspicious vehicles, and criminals present an unknown risk to the officer making the stop. Reasonable precautions should always be taken in stopping a motor vehicle, being cautious of traffic and dealing with the occupants.
2. INITIATING THE STOP
  - a. Prior to or while stopping the vehicle, notify the dispatcher of the following:
    - 1) Location of the stop;
    - 2) Description of the vehicle, including registration number and state; and
    - 3) If possible, a description of its occupants.
  - b. Select a suitable location for making the stop. Officers should consider:
    - 1) Lighting;
    - 2) Traffic flow;
    - 3) Severity of the violation;
    - 4) Weather Conditions; and
    - 5) Characteristics of the roadway.
  - c. Officers may follow the vehicle a short distance prior to initiating a stop to make additional observations of the operation of the vehicle or to ensure a safe location for the stop.
  - d. In stopping the suspect vehicle, guard against any evasive action by its operator.
  - e. Park the patrol vehicle to the rear of the stopped vehicle with emergency lights on to warn traffic and to assist any back-up officers responding to the scene.
  - f. The use of takedown lights and or spotlights should be used when they would not pose a hazard to oncoming traffic, to enhance occupant and officer safety.
3. APPROACHING THE VEHICLE
  - a. The officer should approach the vehicle with caution, checking the trunk and rear seat.
  - b. Officers may approach the vehicle from either the operator's or passenger's side of the vehicle at the officer's discretion.
4. DEALING WITH VIOLATORS [61.1.8]
  - a. Officers should conduct themselves in a professional manner, keeping in mind use of proper language, bearing, and emotional stability. Officers should:

- 1) Be certain of their observations of the alleged violation;
  - 2) Have the necessary forms and equipment to deal with the situation;
  - 3) Maintain tactical awareness, and be observant for signs of impairment, criminal activity or criminal intent;
  - 4) Initiate the conversation with the violator with a friendly greeting using an appropriate title in a courteous manner;
  - 5) Request the required documents, identification, etc.;
  - 6) When obtaining documents, do not accept wallets, purses, or folders. Have the violator remove the document from the container; and
  - 7) After obtaining the required documents or identification, explain to the violator the reason for the stop.
- b. Officers must keep in mind that some violators encountered will show signs of emotional distress. Officers should deal with these individuals in a calm, courteous manner to help reduce that anxiety.
  - c. If occupants are removed from the vehicle, they should be directed to a location relatively safe from traffic. Officers and violators should not stand between the violators and police vehicles.
  - d. Officers should not show violators speeds on radar units.
  - e. Officers may briefly listen to the violator's explanation. However, officers should not become engaged in a debate over the merits of the stop. Violators who wish to contest a citation should be courteously advised that it is unsafe to do so at the roadside and to request a Clerk Magistrate Appeal.
  - f. If citing the driver, officers should briefly explain the violator's options and point out that those options are printed on the back of the citation. [61.1.4]
    - 1) Written warnings have no fine.
    - 2) Civil Citations: The violator may pay by mail or request a hearing.
    - 3) Criminal Citation: Mandatory court appearance. Violator will be notified of the court date if no action is taken or may request a show cause hearing within four (4) days.
  - g. Upon completion of the enforcement action, officers must ensure that the violator safely re-enters the flow of traffic.
5. FELONY/HIGH RISK STOPS [61.1.7(C)]
- a. During high risk felony stops, officers must use extreme caution, employing tactics to minimize the exposure of officers, offenders and the public to danger.
  - b. Preparing for the Stop:
    - 1) Officers shall advise the dispatcher of all pertinent information using the radio.

- 2) Whenever possible, have adequate backup before initiating the stop.
- 3) Conduct the stop in a safe location away from people, vehicles, and hazards.

c. Conducting the Stop

- 1) Place the police vehicle in an advantageous position and use it as cover. Be mindful of:
  - a) Persons, home, businesses, and traffic down range of the suspect vehicle; and
  - b) The position of backup officers to avoid initiating a cross fire in the event that the use of firearms becomes necessary.
- 2) Order the operator to shut off the vehicle, turn on the interior light, roll down the operator's window and put the keys on top of the vehicle.
- 3) Order the occupants to place their hands in plain view.
- 4) Order each occupant, one at a time, to slowly exit the vehicle with their hands in the air. Order them to slowly make a complete turn with their hands in the air and make a cursory check for weapons. If a weapon is spotted, tell back-up officers and the offender that it is seen. Do not permit the offender to touch it.
- 5) Order the offender to walk backwards toward the officers and then to lay face down on the ground with feet and arms extended.
- 6) A back up officer should check the vehicle for hidden occupants and then take a cover position on the suspects.
- 7) Handcuff and then search each suspect in view of the cover officer.

6. ENFORCEMENT ACTION [1.2.7]

- a. All officers shall exercise their good judgment and discretion in taking appropriate enforcement action for each violation of the law witnessed or reported to them.
- b. Traffic enforcement action will be taken without regard to such factors as attitude, intent, or frivolous excuse.
- c. All enforcement actions will be accomplished by using one of the following four methods:
  - 1) **VERBAL WARNINGS:** A verbal warning may be appropriate when the violator commits an act which may be due to ignorance of a particular law, a minor equipment violation, or when enforcing a new traffic law or regulation. [61.1.2(c)]

**NOTE: A WRITTEN WARNING SHOULD USUALLY BE USED INSTEAD OF A VERBAL WARNING BECAUSE IT EXERTS A MORE EFFECTIVE INFLUENCE ON THE DRIVER.**

- 2) **WRITTEN WARNINGS:** A written warning is a proper alternative by officers in response to a minor traffic infraction. [61.1.2(c)]
  - a) It is also appropriate for those violations which occur within the tolerances generally allowed by the courts.
  - b) The excessive use of warnings should be avoided because they could create a feeling of lack of commitment by the department to enforce motor vehicle safety within the community.
  - c) Written warnings result in the operator's identification being added to the records management system.
- 3) **CIVIL CITATIONS:** An officer's discretion and experience should be used in the decision to take punitive action against a violator. The officer should consider this course of action for: [61.1.2(b)]
  - a) Violators who jeopardize the safe and efficient flow of vehicular and pedestrian traffic;
  - b) Hazardous moving violations;
  - c) Multiple violations (multiple violations consist of infractions listed on the same citation);
  - d) Operating unsafe and/or improperly equipped vehicles; and
  - e) Repeat offenders.
- 4) **CRIMINAL COMPLAINT:** Officers may issue a criminal citation for violations of criminal motor vehicle laws. [61.1.2(b)]
- 5) **ARREST:** Officers may effect the physical arrest of any person in violation of those traffic laws allowing an arrest. Officers also have the discretion to issue a criminal citation for an arrestable offense under the guidelines of department policy. [61.1.2(a)]

## **C. Citations**

### **1. GENERALLY**

- a. Whenever legally and practically possible, officers shall issue citations where circumstances dictate the creation of deterrents to unsafe conduct by users of the roadway.
- b. Before releasing the traffic violator, the officer shall provide him/her the following information as appropriate: [61.1.4]
  - 1) Written warnings have no fine or court appearance.
  - 2) Civil Citations: The violator may pay by mail or request a hearing.
  - 3) Criminal Citation: Mandatory court appearance. Violator will be notified of the court date if no action is taken or may request a show cause hearing within four (4) days.<sup>1</sup>
  - 4) All options are explained on the back of the citation.

- 5) Officers shall explain the motorist's options and requirements upon arrest or issuance of a citation.

## 2. CATEGORIES OF DRIVERS

- a. **NONRESIDENTS:** Enforcement activities shall be consistent and in a uniform manner that does not give preference to local residents or non-residents. [61.1.3(a)]
- b. **JUVENILES:** There are no special procedures dealing with juvenile offenders of the traffic laws and in the issuance of citations. Special procedures come into play only if there is an arrest or criminal citation issued to a juvenile. When this occurs, officers are to be guided by the department policy on **Handling Juveniles** . [61.1.3(b)]
- c. **STATE LEGISLATORS:** The Massachusetts Constitution (Part 2, Chap. 1, Sec. 3, Article 10) stipulates that state legislators, while attending, going to, or returning from a session of their respective houses shall be exempt from physical arrest. However, citations may be issued as appropriate. [61.1.3(c)]
- d. **U.S. SENATORS & REPRESENTATIVES:** United States Senators and Members of the House of Representative are also immune from physical arrest while attending, going to, or returning from a session of their respective houses. [61.1.3(c)]
- e. **DIPLOMATIC AND CONSULAR OFFICERS:** These officials shall be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials shall be treated with the courtesy and respect that befit their distinguished positions. [61.1.3(d)]
  - 1) **Diplomatic Agents:** Ambassadors and other diplomatic officers enjoy complete immunity from the laws of the host country. They may not be handcuffed (except in extraordinary circumstances), arrested, detained, or searched, nor may their property or vehicles be searched.
  - 2) **Family Members of Diplomatic Agents:** Spouses, children to age 21 (age 23 if a full time college student) and other persons agreed to by the U.S. Department of State. If family members are U.S. citizens, they enjoy no immunity.
  - 3) **Administrative and Technical Staff members** enjoy the same immunity as Diplomatic Agents for criminal matters and civil matters connected to their official duties. Family members enjoy the same immunity as their sponsors but have no civil immunity.
  - 4) **Service Staff members** enjoy immunity related to their official acts only. Family members have no immunity.
  - 5) Traffic citations may be issued; however, the subject may not be compelled to sign the citation. (Whether it is paid is another matter.)
  - 6) Any citations issued shall be reported to the U.S. Department of State. The State Department maintains driver histories and assesses points



for moving violations. Drivers who demonstrate a pattern of driving infractions are subject to having their licenses suspended or revoked.

- 7) OUI: When such person with full immunity from arrest is, in the officer's opinion, too impaired to drive safely, the officer may:
  - a) With the individual's permission, take him/her to the police station or other location until [s]he recovers sufficiently to drive;
  - b) Summon, or allow the individual to summon a friend or relative to drive; or
  - c) Call a taxi or other ride sharing company for transport.
- f. MILITARY PERSONNEL: When dealing with military personnel and a physical arrest is made, the investigating officer's Supervisor or OIC shall cause the liaison officer of the nearest armed forces investigative headquarters division to be notified. [61.1.3(e)]

### 3. CITATIONS

- a. Accountability: Traffic citations are received from the Registry of Motor Vehicles. Each book number shall be recorded in the records division before issuance to individual officers. These citations are accounted for from the point of issuance to the time they are recorded and sent to the Registry or court for disposition.
  - 1) OBTAINING CITATIONS: Motor vehicle citation books are kept in supply room and shall be issued to officers as needed. [82.3.4(a)]
    - a) The receiving officer shall inspect the citation book to ensure that it is not defective, and that all citations are present. Problems should immediately be brought to the attention of the issuing person.
    - b) The name, badge number, and date of issue shall be recorded in a citation book issue log when an officer is issued a citation book.  
VOIDED CITATIONS: When an officer needs to void a citation, the violator should be given the corrected copy. The original citation shall be signed and turned in to the records division with a report for proper administrative disposal.
  - 2) ISSUING CITATIONS
    - a) Timeliness: Failing to give the violator a citation at the time and place of the violation shall constitute a defense unless:
      - i. The violator could not have been stopped.
      - ii. Additional time is reasonably necessary to determine the nature of the violation or the identity of the violator.
      - iii. The court finds the failure is justified.
    - iv. **NOTE: This does not apply to M.G.L. c. 90 §§§24, 24G or 24L if the violation of automobile law resulted in death.**

- b) Issuing Citations Not In-hand: Citations not given to the violator at the time and place of the violation, or given after an investigation, must be written as soon as possible and may be delivered to the violator or mailed to the violator's residential or mail address, or to the address appearing in Registry records.<sup>3</sup>
- c) Types of Violations
  - i. Arrest: If a citation was issued in conjunction with an arrest, it should be marked "Arrest" and processed as an arrest. The violator should be given the "violator copy" and the remaining copies submitted to the department, pursuant to this policy.
  - ii. Civil: The violator should be given the "violator copy" and the remaining copies submitted to the department.
  - iii. Criminal: If any violations indicated on a citation are criminal, the citation should be marked "criminal." The "violator copy" should be given to the violator, the "court copies" submitted to the court along with the incident report and statement of facts, and the agency copy submitted to the department.
  - iv. Warning: The violator should be given the "violator copy" and the remaining copies submitted to the department.
  - v. Drug Offenses: A citation may be issued to any person charged with a drug offense, while operating a motor vehicle. The citation serves as a vehicle for the court to notify the Registry in the event of a conviction. On a citation separate from any others issued for the incident, enter the charge for possession of the drug, intention to distribute, or traffic, etc., and cite M.G.L. c 90 §22(f). **Do not give the violator a copy. Submit the agency copy** to the department and the remaining copies to the court with the other court documents.

### 3) SUBMITTING CITATIONS

- a) OFFICER'S COPY: The issuing officer shall retain the officer copy.
- b) ISSUED CITATIONS: All citations issued during an officer's tour of duty shall be submitted to the officer's Supervisor or OIC at the end of that tour of duty. Placing the citations in the appropriate shift tray in the Squad Room is the preferred method of submission.
- c) LOST CITATIONS: Officers shall submit to the shift Supervisor or OIC a written report explaining the circumstances surrounding the lost citations.
- d) VOIDED CITATIONS: When an officer needs to void a citation, the violator should be given the corrected copy. The officer shall submit a written report explaining the reasons for voiding the citation, along with the voided citation, to the shift Supervisor or OIC, who shall submit same to the records department.

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- e) AMENDMENTS TO CITATIONS: Amendments to criminal or arrest citations shall be processed by the Court Officer. Non-criminal citations may not be amended after issue. An additional citation must be issued to the violator.
  - f) The Supervisor or OIC will review the citations, noting any irregularities, and shall turn them in to the records department. [82.3.4(c)]
- 4) Processing Citations: A records clerk shall collect the submitted citations and sort them according to type:
- a) Arrests: The Court copies are the charging instrument for motor vehicle citations linked to an arrest. They shall accompany the arrest reports and any other arrest documents to court.
  - b) Civil Citations: The RMV copy shall be submitted by mail to the Registry of Motor Vehicles each day in the supplied RMV envelope. The agency copies shall be retained by the department.
  - c) Criminal: The Court copies are the charging instrument for criminal motor vehicle citations. They shall accompany the incident report, along with any other related documents, to court.
  - d) **Drug Possession: Citations issued under M.G.L. c. 90 §22 are a** vehicle for RMV reporting purposes only. The agency copy shall be retained. All remaining copies (other than the officer's copy) shall accompany the criminal charging instruments and other documents to court.
  - e) Voided: All copies shall be retained by the records office and submitted periodically to the Registry.
  - f) Warnings: The RMV copy shall be submitted by mail to the Registry of Motor Vehicles each day in the supplied RMV envelope. The agency copies shall be retained by the department. The Court Copy shall be destroyed.
- 5) Audit Sheets: A Registry of Motor Vehicles Uniform Citation audit sheet is prepared by Chief or Sergeant in compliance with Registry guidelines and submitted to the Registry by the records office when all citations in that book have been issued. [82.3.4(b)]
- 6) Retention
- a) Completed warnings and non-contested civil citations shall be retained for at least one year.<sup>4</sup>
  - b) Arrest and criminal citations shall be retained until completion of prosecution and exhaustion of appeals.
4. INTERFERING WITH THE CITATION PROCESS: Members of the department are prohibited from ticket fixing. The State Ethics Commission has ruled that requests by police officers for a consideration or a dismissal of

traffic citations based on the violator's personal connection with a police officer violate the conflict of interest law.<sup>5</sup>

#### **D. Violations**

1. OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS [61.1.5(A)]
  - a. Many traffic accidents, particularly those involving a fatality or personal injury, are directly attributable to persons driving under the influence of alcohol and/or drugs. In all contacts with violators, the officer should be aware of the possibility the driver may be under the influence of alcohol or drugs.
  - b. If the officer determines that the operator is under the influence of alcohol or drugs, appropriate enforcement action is warranted. For further information, see the department policy on **Impaired Drivers**.
2. LICENSE SUSPENSIONS AND REVOCATIONS [61.1.5(B)]
  - a. If the officer is certain of the suspension/revocation and observes operation, an arrest is the preferred action.
  - b. A criminal citation may be issued at the discretion of the officer.
3. SPEED VIOLATIONS
  - a. Officers shall use verbal warnings, written warnings, and citations to encourage motorists to voluntarily comply with traffic speed laws and regulations.
  - b. Speeding citations should be for a clearly convictable speed in court, and may to some extent depend on location of violation (congested area, downtown, school zone, etc.). [61.1.5(c)]
4. OTHER HAZARDOUS MOVING VIOLATIONS [61.1.5(D)]
  - a. A hazardous moving violation is a violation of any law, ordinance, or regulation affecting the use or protection of streets or highways enacted primarily to regulate safe movement of vehicles and pedestrians.
  - b. Officers should stop and investigate hazardous violators.
  - c. Violators found to be intentionally engaged in hazardous operations should be cited or charged.
  - d. Violators found to be in medical distress or incompetent should be addressed appropriately. See the department policy on **Traffic Safety**.
  - e. RECREATIONAL, OFF ROAD, AND SNOW VEHICLES: Officers shall take appropriate enforcement action against operators of off-road recreational vehicles (e.g., snowmobiles, dirt-bikes, mini-bikes) committing violations that are either observed by the officers or reported to them.<sup>6</sup> [61.1.5(e)]

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5. EQUIPMENT VIOLATIONS: [61.1.5(F)]
    - a. Officers should consider issuance of a citation for any essential equipment defects.
    - b. Whenever a fixture is missing and it is obvious that the owner is aware of the defective equipment, a citation should generally be issued.
    - c. If the equipment violation is not obvious, the officer may stop the violator, warn of the defect, and give a verbal or written warning.
  6. PUBLIC CARRIER/COMMERCIAL VEHICLE VIOLATION [61.1.5(G)]
    - a. When encountering these types of vehicles, all patrol and traffic enforcement officers should enforce traffic laws that relate generally to all classes of vehicles (speed, turning movements, traffic control signals, etc.) and safety laws specific to these vehicles, such as having an uncovered load. Patrol officers may enforce non-safety violations as well.
    - b. Officers trained in commercial vehicle enforcement shall enforce such violations.
  7. OTHER NON-HAZARDOUS VIOLATIONS: With other non-hazardous violations of law, ordinances, by-laws, or regulations affecting the use or protection of streets or highways, but not enacted primarily to regulate safe movement of vehicles and pedestrians, consider warnings unless the violations are repetitive or flagrant. [61.1.5(h)]
  8. MULTIPLE VIOLATIONS [61.1.5(I)]
    - a. Generally a violator may receive a single charge for each type of violation observed in an incident for non-hazardous violations stemming from the same operation.
    - b. For instances where, in the opinion of the officer, multiple violations are intentional, flagrant or hazardous, officers may charge violators for each violation.
  9. NEWLY ENACTED LAWS AND/OR REGULATIONS: These cases should be treated on a case-by-case basis depending on the severity and nature of the offense. [61.1.5(J)]
  10. VIOLATIONS RESULTING IN COLLISIONS [61.1.5(K)]
    - a. GENERAL ACTION: Officers are expected to take enforcement action whenever their traffic accident investigation or reporting activities produce probable cause to believe that a violation of law or ordinance has occurred. See the department policy on **Traffic Accidents** .
    - b. SPECIFIC ACTION: Enforcement action arising from traffic accident investigation or reporting (e.g., physical arrest, citation, written warning, etc.) will be consistent with the nature of the alleged violation and with all written directives concerning traffic law enforcement.
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## 11. SPECIAL ENFORCEMENT [61.1.5(L)]

- a. BICYCLES: Officers may use their discretion enforcing laws relating to bicycles. Hazardous operation should be cause for police action.<sup>7</sup>
- b. PEDESTRIANS: Officers may use their discretion in enforcing laws relating to pedestrians, concentrating on dangerous or suspicious activities.

## E. Speed Measuring Devices

### 1. EQUIPMENT SPECIFICATIONS

- a. Members of the department shall use mobile or stationary traffic radar units, or LIDAR provided by the department. [61.1.9(a)]

### 2. OPERATIONAL PROCEDURES

- a. Radar
  - 1) Prior to using radar, inspect the unit for damage and operability.
  - 2) Upon turning the unit on, conduct a unit test using the built-in equipment test and/or tuning fork. Inoperative or malfunctioning units should be taken out of service.
  - 3) Use radar units to quantify officer's estimations of vehicle speed.
- b. LIDAR
  - 1) Prior to using LIDAR, inspect the unit for damage and operability.
  - 2) Upon turning the unit on, conduct a unit test using the built-in equipment test. Inoperative or malfunctioning units should be taken out of service.
  - 3) Aim the LIDAR at a specific target and use the units to quantify the speed and distance of an officer's estimations of vehicle speed.

### 3. PROPER CARE AND UPKEEP [61.1.9(C)]

- a. Speed measuring equipment should be protected against liquids and impacts.
- b. Vehicle mounted systems should be securely fastened to the vehicle.
- c. Handheld units should be protected from damage while inside of the vehicle. Unused units should be cased and stored in the police facility.

## F. PROGRAMMED MAINTENANCE

1. The Chief of Police or his designee shall be responsible for coordinating the repair and schedule maintenance of Radar and LIDAR units. Units should be serviced and calibrated annually. [61.1.9(d)]
2. MAINTENANCE AND CALIBRATION RECORDS: A record of all maintenance and calibrations of Radar and LIDAR units shall be kept by Chief of Police or his designee. [61.1.9(d)]

3. OPERATOR TRAINING AND CERTIFICATION: All members of patrol, and any other officer wishing to use the Radar and LIDAR equipment, shall receive training specified by the Municipal Police Training Committee prior to using the equipment. [61.1.9(e)]

## G. Reports

1. Accurate, timely, and complete reports are fundamental to the department's efficient and effective operation, as they form the basis for prosecution and ultimate adjudication of traffic offenses.
2. Officers shall complete all traffic citations and reports and submit them in a timely manner. See the department policy on **Incident Reporting**.

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<sup>1</sup> M.G.L. c. 90, §3.

<sup>2</sup> M.G.L. c. 90c, §2.

<sup>3</sup> M.G.L. c. 90c, §2.

<sup>4</sup> Guidelines of the Office of the Secretary of the Commonwealth, Police Department Records Disposal Schedule 14-81, Series 14.20.

<sup>5</sup> M.G.L. c. 268A, §23.

<sup>6</sup> M.G.L. c. 90B, §§20-34.

<sup>7</sup> M.G.L. c. 85, §11B regulates the use of bicycles, and M.G.L. c. 90, §§1B and 1C regulates the use of mopeds.

# TRAFFIC COLLISIONS

POLICY & PROCEDURE NO. <b>5.02</b>	ISSUE DATE: 10/05/15
	EFFECTIVE DATE: 11/04/15
HADLEY POLICE DEPARTMENT	LAST REVIEWED DATE: 02/22/2019

## I. GENERAL CONSIDERATIONS AND GUIDELINES

The police function in relation to traffic collisions is varied. Aid to the injured, traffic control, investigation, and enforcement and collision prevention are some of the areas upon which the police will have an impact. An adequate response, knowledgeable performance and preventive efforts can go a long way in minimizing increased damage to property and bodily injury. Police responsibility will continue until the injured have been cared for, the collision vehicles have been removed, the roadway is clear of debris, and the traffic flow is normalized.

The objective of a hit and run investigation is to determine responsibility for the collision and to identify both the offender and the vehicle involved. This is often a difficult task because the very elements of the crime include flight from the scene. Hit and run collisions may involve property, persons or both. As the circumstances are more serious when a human life is involved, these procedures are primarily directed at hit and run investigations involving persons.

## II. POLICY

It is the policy of this department to respond to and investigate all traffic collisions requiring police response.

## III. PROCEDURES

### A. Collision Response, Investigation and Reporting

1. COLLISIONS REQUIRING POLICE RESPONSE: Officers should respond to traffic collisions involving any of the following circumstances:
  - a. Collisions resulting in death or personal injury; [61.2.2(a)]
  - b. Hit and run collisions; [61.2.2(b)]



- c. Impairment of an operator due to alcohol or drugs; [61.2.2(c)]
  - d. Damage to government vehicles or property; [61.2.2(d)]
  - e. Collisions involving hazardous materials (HAZMAT); [61.2.2(e)]
  - f. Disturbances between principals; [61.2.2(f)]
  - g. Major traffic congestion because of the collision; [61.2.2(g)]
  - h. Damage to any vehicle that requires it to be towed; and [61.2.2(h)]
  - i. Any reported collision.
2. COLLISIONS REQUIRING POLICE REPORT AND INVESTIGATION: The following types of collisions, whether occurring on public or private property, shall require police investigation and report: [61.2.1(f)]
- a. All those involving death or personal injury; [61.2.1(a)]
  - b. All property damage collisions with estimated damage to any one vehicle in excess of one thousand dollars;<sup>1</sup> [61.2.1(b)]
  - c. All hit and run collisions which involve personal injury, and those hit and run property damage collisions where investigative techniques can be applied; [61.2.1(c)]
  - d. Those involving operator impairment due to alcohol or drugs; [61.2.1(d)]
  - e. Those involving any vehicle carrying hazardous materials (HAZMAT); [61.2.1(e)]
  - f. Those which appear to have been caused by a flagrant moving violation on the part of one or more of the operators, by defective equipment on or in a vehicle, or by any other circumstances which impeded the safe operation of a vehicle;
  - g. Those which appear to have been caused by the incompetence of an operator. (See the department policy on **Traffic Safety** .) ; and [61.1.2]
  - h. A collision occurring under the above conditions on private property. [61.2.1(f)]

## **B. Duties of First Officers on the Scene**

1. UPON ARRIVAL
- a. The first officer arriving shall be in charge until relieved by a superior officer or an investigator and: [61.2.3(a)]
    - 1) If necessary, request assistance of other patrol units, emergency medical personnel, and/or the fire department;
    - 2) Identify injured persons, determine the extent of injuries, if any, and treat the most serious until assistance arrives; [61.2.3(b)]
    - 3) Address concerns for the safety of responders, investigators and traffic;

- 4) Secure the scene as a crime scene, and preserve and protect evidence; [61.2.3(e)]
  - 5) Identify hazardous materials or fire hazards; [61.2.3(c)]
  - 6) In the event of hazardous material incidents, isolate the hazard area and evacuate nonessential personnel.
- b. The officers shall then be responsible for preliminary hazard identification (spill, leak, fire) and identification of vehicle and container placards, until the arrival of the fire department.
  - c. The officers should collect operators' licenses, passenger identifications, vehicle registrations, and witness identifications, as appropriate [61.2.3(d)], and arrange for the removal of damaged vehicles from the roadway, where they will not impede or interfere with the investigation.
2. PROPERTY: When officers are required to handle collision victims' personal property (such as for identification purposes), they shall do so, whenever possible, in the presence of witnesses, who shall be identified in the officers' reports. If property is to be held, it shall be turned into the property officer and documented in accordance with the department policy on **Evidence and Property Control** . [61.2.3(f)]

### C. Preliminary Investigations

1. DUTIES OF INVESTIGATING OFFICER [61.2.4]
  - a. The initial responding officer may be assigned to investigate the collision.
  - b. The assigned investigating officer shall conduct a thorough investigation of the collision and take the following actions:
    - 1) Identify and interview operators and passengers. Check validity of their right to operate and vehicle registration and insurance status.
    - 2) Interview principals and witnesses.
    - 3) Examine and record vehicle damage.
    - 4) Examine and record effects of collision on the roadway, median barriers, utility poles and other infrastructure.
    - 5) Take measurements, as appropriate.
    - 6) Take photographs, as appropriate.
    - 7) Collect and preserve evidence.
    - 8) Collect and record operator and vehicle information for report and exchange among principals.
    - 9) Instruct principals of crash report filing requirements, in writing at the time of the crash, or via department email.
    - 10) Complete the police officer's Registry of Motor Vehicles Collision Reporting Form.

11) In cases where the ambulance service has transported an injured person to the hospital, an officer may respond to local hospitals when a statement is needed from an injured party.

## 2. DUTIES OF THE SUPERVISOR OR OIC

- a. In all cases of serious collisions and collisions resulting in a major disruption of the flow of traffic, a Supervisor or OIC shall be assigned to the scene and shall take charge until relieved by a member of the detective unit or a superior officer.
- b. The Supervisor or OIC shall:
  - 1) Coordinate the response of other public safety service providers;
  - 2) Request additional resources as necessary;
  - 3) Coordinate the re-routing of traffic if necessary;
  - 4) Supervise the treatment of injured until medical personnel arrive; and
  - 5) Supervise the investigation.

## 3. COLLISION RECONSTRUCTION

- a. When appropriate, the shift Supervisor or OIC shall request an officer trained in Accident Reconstruction from within the department or from the Massachusetts State Police Reconstruction Team.
- b. The Reconstruction Team shall always be called in all cases involving:
  - 1) Fatalities; and
  - 2) Serious personal injury which is likely to result in death.
- c. The Reconstruction Team may be called in:
  - 1) For cases where, in the opinion of the officers on scene, and with the approval of a Supervisor or OIC, the expertise of the Reconstruction Team is necessary; or
  - 2) When requested by a Supervisor or OIC.

## **D. Follow-Up Investigations [61.2.4]**

### 1. FOLLOW UP SERVICES

- a. The department shall perform follow-up traffic collision investigation services in support of on-going or anticipated criminal prosecution whenever necessary. The discretionary authority of a Supervisor or OIC or prosecutor generally activates the use of this type of investigation.
- b. When warranted, this follow-up information should include, but not be limited to:
  - 1) Collecting off-scene data;
  - 2) Obtaining/recording formal statements from witnesses and suspects;
  - 3) Reconstructing collision; and

- 4) Preparing formal reports to support criminal charges arising from the collision.

## 2. EXPERT AND TECHNICAL SERVICES

- a. Accident Reconstruction Services: Trained personnel may be able to determine:
  - 1) The likely speed of a vehicle from skid marks and vehicle crush damage;
  - 2) Positions of vehicles and pedestrians;
  - 3) Which occupant was operating or where occupants were seated;
  - 4) The contribution of roadway conditions and design, operation, and vehicle conditions to the collision;
  - 5) Energy losses and momentum exchanges in stopping vehicles; and
  - 6) The movements of vehicles and bodies in collisions.
- b. Air Bag Control Module: Trained personnel may be able to determine:
  - 1) Which passenger safety devices were used prior to the collision;
  - 2) Which passenger protection devices were deployed during the collision;
  - 3) The change in velocity of the vehicle prior to and shortly after impact; and
  - 4) The use of brakes.

Note: A search warrant may be necessary to search the Airbag Control Module. See the department policy on **Search and Seizure** .

- c. Experts: From time to time, follow-up collision investigations may require special skills and technical assistance beyond that available from department personnel. When necessary, the department shall utilize outside expert and technical assistance (i.e., photographers, surveyors, mechanics, physicians, and collision team specialists). A Superior Officer shall make the decision of when to call in an outside crime scene specialist.

## E. Investigations of Hit and Run Collisions

1. THE ELEMENTS OF HIT AND RUN:<sup>2</sup> The defendant goes away having operated a motor vehicle upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, after knowingly colliding with or otherwise causing injury to any person, or injury to any other vehicle or property without stopping and making known his/her name and residence and the registration number of his/her motor vehicle.

## 2. ON-SCENE DUTIES

- a. Officers shall first make provisions for the medical treatment of the victim, if necessary. Investigating officers should follow-up on the condition of victims after they are transported to a hospital if there is any possibility that the victim could die of his/her injuries, thus making a charge of motor vehicle homicide possible.
- b. Officers shall obtain the best possible description of the operator and his/her vehicle from the victim and available witnesses. The following information about the vehicle is important:
  - 1) Make;
  - 2) Model;
  - 3) Year;
  - 4) Color;
  - 5) Extent and location of damage;
  - 6) License plates (including partial numbers or letters);
  - 7) Unusual markings or equipment (including school, fraternal or organizational signs or stickers, roof racks);
  - 8) Direction of travel before and after the collision; and
  - 9) Number of passengers, if any, and their descriptions.
- c. Descriptive information obtained shall immediately be communicated to the dispatcher.
- d. Officers shall search the area around the scene of the crash, the automobile or other property which was struck, and the clothing of any victim for physical evidence, including:
  - 1) Personal property left behind by the offender;
  - 2) Glass fragments or paint chips;

NOTE: In the event a pedestrian is struck and injured, officers should meet the ambulance at the hospital, if possible, to secure any such evidence which may have been dislodged from the victim's clothing during transport. Also, hospital personnel should be requested to give the victim's clothing and any associated paint chips or glass fragments to police.
  - 3) Pieces of chrome or grill work;
  - 4) Hub caps;
  - 5) Tire marks;
  - 6) Oil, gas or water marks leading away from the scene;
  - 7) Mud or dirt dislodged on impact; and

- 
- 8) Video from any likely security cameras.
  - e. Photographs and measurements shall be taken at the scene when required.
  - f. Officers shall examine the person and clothing of the victim. Particularly important are traces of paint or parts of the vehicle. If necessary, an officer may take and preserve articles of clothing or other samples of evidence, such as hair, blood, etc. Outer clothing should be examined for indentations left by impact points of the suspect auto, as these may serve to identify the vehicle. If such indentations exist, the clothing should be carefully preserved to prevent their obliteration.
  - g. Officers should be observant for persons foreign to the scene or persons behaving in a suspicious manner.
  - h. Where appropriate, officers should conduct a door-to-door canvas of residences and businesses in the vicinity of the hit and run scene. Often, persons who did witness some aspect of the incident are reluctant to come forward and must be sought out by the police.
  - i. A preliminary search for the suspect car and driver shall be conducted as soon as possible.
  - j. Neighboring police departments and the State Police should be notified and given as complete a description as is then available.
  - k. The media may be contacted to alert and enlist the aid of the public in locating the suspect vehicle and driver.
  - l. The investigating officer shall prepare a report in accordance with department procedures.
3. FOLLOW-UP INVESTIGATIONS
- a. In-depth or follow-up investigations shall be conducted upon the direction of the Chief or a Supervisor or OIC.
  - b. The follow-up investigation, if any, may include the following types of activity:
    - 1) Checks of records on stolen cars;
    - 2) Communication of information relative to the description of the offender and vehicle to other members of the department, to police departments in surrounding communities and to the State Police;
    - 3) A second search of the collision scene covering a wider area;
    - 4) Repeated visits to and surveillance of the scene at the same time of the day that the collision occurred;
    - 5) Canvassing of local businesses for video of the collision or traffic leading to or from the scene; and
    - 6) Visits to garages, auto parts dealers, auto glass dealers, car dealers, auto body repair shops, car wash facilities, etc.

- c. If the vehicle involved is located, it shall be carefully examined.
  - 1) Measure dents and body damage as to width, depth and pattern, taking photographs, if possible.
  - 2) Obtain samples of paint chips, broken glass, pieces of clothing, dirt, evidence of blood, hair, flesh, etc.
  - 3) Inspect the interior for personal articles which may identify the offender.
  - 4) Observe and note any signs of recent repair or any broken or missing parts.

NOTE: The above steps must be taken in accordance with the department policy on **Search and Seizure** . In the event a search warrant is sought, the vehicle should be kept under surveillance until a warrant is obtained. The identity of any person attempting to enter the vehicle or to destroy evidence should be established.

- d. If the operator of the suspect vehicle is located, [s]he should be questioned promptly. If applicable, the Miranda procedures must be followed (See department policy on **Interrogating Suspects and Arrestees** .) Prompt interrogation of the suspect driver is important. For example, if [s]he cannot provide an alibi, or if [s]he provides an alibi that is later discredited, these will be critical factors contributing to a successful prosecution.
- e. In conducting a hit and run investigation, it should be noted that a hit and run driver is not necessarily the operator responsible for the collision, but [s]he may be fleeing from the scene of a crime. There may be a warrant for his/her arrest; [s]he may be intoxicated; [s]he may not have a valid license; or his/her license may be suspended or revoked. It is also not unusual for a hit and run driver to abandon his/her vehicle as soon as possible and then report it to the police as stolen in order to escape responsibility for the collision.
- f. A full and complete report shall be made of the collision and the particulars of any follow-up investigation, in accordance with departmental procedures.

## **F. Collision Reporting: Data and Collision Form Use**

### **1. COLLISION DATA**

- a. This data provides information to officers which will allow them to utilize enforcement procedures for the purpose of reducing collisions within the community.
- b. The analyzed information should be based on collision data by:
  - 1) Location;
  - 2) Time and violation factors;

- 3) Fluctuations caused by seasonal variations that result in increases or decreases in traffic volume; and
- 4) Injuries.

## 2. COLLISION INVESTIGATION FORM

- a. Whenever an officer investigates a collision in which there is personal injury and/or property damage in excess of one thousand dollars to any one vehicle, or any other property damage in excess of one thousand dollars, the officer shall be required to complete a Commonwealth of Massachusetts Police Report of Motor Vehicle Collision Form.
- b. When an officer is in doubt as to the extent of property damage or the possibility of injury, the Commonwealth form shall also be used. (In this case the report shall be noted For Department Use Only.) If a collision is minor in nature and no further information will be needed at a later date, officers may so advise the dispatcher, in lieu of a written report, and ask that the information be entered into the CAD report.
- c. SUPPLEMENTAL REPORT FORM: A supplemental report form shall be attached when appropriate, such as when a citation is issued or when the officer feels it is necessary to further explain actions taken.

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<sup>1</sup> M.G.L. c. 90 s. 26

<sup>2</sup> M.G.L. c. 90, s. 24(2)(a)

UPDATED 7/29/19 Section III A Paragraph 2 part 11 added requiring written instructions provided at time of crash/email follow up.



# MOTOR VEHICLE INVENTORY

POLICY & PROCEDURE NO. <b>5.03</b>	ISSUE DATE: 10/05/15
	EFFECTIVE DATE: 11/04/15
HADLEY POLICE DEPARTMENT	LAST REVIEWED DATE: 02/22/2019

## I. GENERAL CONSIDERATIONS AND GUIDELINES

A motor vehicle inventory is an administrative measure designed to:<sup>1</sup>

- Protect the motor vehicle as well as any personal property contained in such vehicle;
- Protect the police and tow contractor against claims arising from property allegedly lost or stolen while in police custody; and
- Protect department personnel and the public from injury or property damage due to dangerous items or substances that may be contained in the vehicle.

This policy and procedure does not apply to searches conducted for the purpose of discovering evidence. Consult the department's policy regarding Searches and Seizures where the examination of a motor vehicle or its contents is to be conducted with an investigatory motive.

## II. POLICY

It is the policy of this department that motor vehicles which are lawfully towed, removed, impounded or stored at the direction of police officers or placed in the custody of the police department shall be inspected and inventoried according to the procedures in this policy.<sup>2</sup>

## III. DEFINITIONS

A. Impound: To take into custody of the law.<sup>3</sup>

Note: Although the leading cases state that inventories are only justified when a vehicle has been lawfully impounded, neither the U.S. Supreme Court nor the Massachusetts state courts have defined this term.

- B. **Inspection:** An examination of the exterior and interior of the vehicle for damaged or missing parts.
- C. **Inventory:** An examination of all areas of the vehicle in which personal property may reasonably be found, including but not limited to the passenger compartment, trunk, and glove/map box.
- D. **OUI Hold-** A 12-hour vehicle hold applied to any vehicle where the operator was suspected of driving while impaired, regardless of whether or not the operator was charged or arrested.

## **IV. PROCEDURE 1.2.4(F)**

### **A. Inventory Process**

1. **RESPONSIBILITY:** The officer directing that a vehicle be towed, removed, impounded or stored, or the officer acting on behalf of the department in accepting custody of a vehicle, shall inspect and inventory the vehicle and its contents unless the responsibility for the same has been properly transferred to another officer.
2. **WHEN NOT TO INVENTORY:** An inventory shall not be conducted in the following situations:
  - a. The vehicle is disabled, either by mechanical failure or as a result of damage resulting from a motor vehicle accident, where the owner and/or operator is present and makes satisfactory arrangements to have the vehicle removed by someone other than the department's on-call tow company.
  - b. The vehicle is towed by the Department's tow contractor, to a location other than the contractor's lot, and the owner or operator accompanies the tow.
  - c. The vehicle is not to be removed and does not impede traffic flow and is not illegally parked.
3. **ALTERNATIVE TO POLICE TOW:** When the operator is arrested, and proposes that the vehicle be turned over to an identified person who is not under arrest or otherwise incapacitated, who is properly licensed to operate the vehicle, and who agrees to take charge of the vehicle, the officer should allow such arrangement as an alternative to police tow. When the officer does not permit the third party to take charge of the vehicle, the reasons for ordering the tow shall be articulated in his/her report.
4. **REMOVAL OF PROPERTY BY OWNER:** The owner or operator of the vehicle, unless arrested, should be asked to remove all valuables from the vehicle prior to police tow. Items not removed shall be inventoried.

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## 5. LOCATION OF INVENTORY

- a. Whenever the inspection and inventory at the scene are not safe or practical, they may be conducted at a storage facility.
- b. Whether the inspection and inventory are conducted at the scene or at a storage facility, they should be conducted within a reasonably short period of time after the vehicle was taken into custody.
- c. Officers must maintain custody of the vehicle until the inventory is complete. When the inventory is to be conducted at a storage facility, the officer must follow the tow truck to the storage facility.

## **B. Sequence of Inspection and Inventory**

1. PROCESS: The standard inventory process will consist of an inspection and inventory (see Definitions).
2. EXTERIOR SEQUENCE: The exterior of the vehicle shall be inspected for missing or damaged parts. The following order of inspection is recommended:
  - a. Front of the vehicle;
  - b. Right (passenger) side;
  - c. Vehicle rear;
  - d. Left (driver) side;
  - e. Surface of the hood;
  - f. Roof;
  - g. Trunk;
  - h. Undercarriage areas; and
  - i. Tires.
3. INTERIOR
  - a. The interior shall be inventoried according to the major areas of the vehicle. The following sequence is recommended: starting with the left front (driver) to the right front (passenger) areas, inventory the visors, dashboard, unlocked glove/map box areas, and under the front seats and mats. Next, the rear seats from left to right, the area under the seat mats and seats, any rear deck above the back seats, and any space behind the seats shall be inventoried. Lastly, the trunk shall be unlocked and inventoried.
  - b. If the glove/map box and/or trunk are locked and the officer cannot open them with a key or from within the vehicle, these areas shall not be inventoried and appropriate notations made on the Motor Vehicle Inventory Form.

- c. In many vehicles, a locked trunk may be opened from within the vehicle. In these vehicles, the trunk shall be opened and inventoried.
  - d. For vehicles where the trunk is locked and no key is available, but the trunk may be accessed by folding down the rear seat, this shall be done and the trunk's contents inventoried.
  - e. When an officer has probable cause that a locked trunk or glove/map box contains explosives, weapons or other substances that present an immediate danger to the public or the officer, a search warrant shall be obtained unless exigent circumstances make the delay impractical.  
(Consult the department's procedure regarding **Searches and Seizures** .)
4. VALUABLE ITEMS: Items which appear to be valuable shall be noted on the Inventory Control Sheet, secured and/or removed according to departmental procedures and promptly brought to the attention of the Evidence/Property Officer. Removable items shall be removed from the vehicle. See Section IV.D.2 below.
  5. ANIMALS: When there is a live animal in the vehicle, animal control shall be notified to take charge of the animal, unless the owner or operator of the vehicle makes other arrangements.
  6. DOCUMENTATION
    - a. All damaged or missing vehicle parts and items found in the vehicle shall be recorded on the Motor Vehicle Inventory Control form. A copy of completed forms shall be attached to and made a part of an officer's police report, with the master filed in the Department Tow Log Book. Such report shall document all facts, information and circumstances justifying the towing of the vehicle.
    - b. Property removed from the vehicle shall be listed on the Motor Vehicle Inventory Form, stating the reason for removal, and shall be immediately turned over to the department's Evidence/Property officer or immediate Supervisor or OIC.
    - c. Should the list of property removed from the vehicle be so large as to make the use of the Motor Vehicle Inventory Form impractical, the officer may list the items on a separate sheet and attach the same to the Motor Vehicle Inventory Form.
  7. DANGEROUS ITEMS: Dangerous items shall be noted on the Motor Vehicle Inventory Form, secured and/or removed according to departmental procedures and promptly brought to the attention of the Evidence/Property Officer. Removable items shall be removed from the vehicle. See Section IV.D.2 below.

### **C. Inventory of Containers**

1. DOCUMENTATION: The presence of all containers and packages shall be noted on the Motor Vehicle Inventory Form. The officer shall document whether the container is closed or locked.

2. UNLOCKED CONTAINERS: All unlocked containers shall be opened, and the contents shall be inventoried separately.
3. LOCKED CONTAINERS: If a key or lock combination is available, locked containers shall be opened and inventoried. All locked containers which cannot be opened shall be noted on the Motor Vehicle Inventory Form. When there is probable cause that a locked container contains explosives, weapons or other substances that present an immediate danger to the public or the officer, a search warrant shall be obtained unless exigent circumstances make the delay impractical.

#### **D. Discovering Evidence of a Crime**

1. ADMISSIBILITY: While the purpose for an inspection and inventory of a motor vehicle is not to discover evidence of a crime, such evidence may be found inadvertently and is admissible so long as the inventory search is conducted in accordance with this policy and procedure.
2. SEIZURE: Any article discovered as a result of a motor vehicle inventory may be seized if it is deemed to be:
  - a. Contraband;
  - b. Fruits of a crime; or
  - c. Instruments of a crime.

#### **E. Release of Towed Vehicle**

1. It is the policy of this department to ensure that motorists taking charge of vehicles towed and impounded by this agency are properly licensed and fit to drive, and the vehicle properly registered and insured.
2. An operator of a vehicle towed pursuant to this policy shall when reasonable, receive a copy of the inventory form, which provides the instructions to allow for the vehicle to be released.
3. Prior to release, the owner/designated operator must appear at the Hadley Police Department with two licensed operators (including themselves) to confirm the status of the vehicle registration, and the licenses of the designated operator, as well as the person driving to the tow yard. They must also pay the \$20.00 administrative fee.
4. Tow releases are not to be issued over the phone, unless authorized by a supervisor. This does not relieve anyone of the responsibility to confirm the active status of the licenses/vehicle registration.
5. In the event a vehicle registration or any of the licensed persons appearing not having an active license, or if the 12-hour OUI hold has not elapsed, the release shall not be issued.

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<sup>1</sup> Com v. Tisserland, Mass.App.Ct. 383, 363 N.E.2d 530 (1977)

<sup>2</sup> Com v. Bishop, 402 Mass. 449, 523 N.E.2d 779 (1988).

<sup>3</sup> Black's Law Dictionary, sixth ed.

# TOWING AND ABANDONED VEHICLES

POLICY & PROCEDURE NO. <b>5.04</b>	ISSUE DATE: 10/05/15
	EFFECTIVE DATE: 11/04/15
HADLEY POLICE DEPARTMENT	LAST REVIEWED DATE: 02/11/22

## I. GENERAL CONSIDERATIONS AND GUIDELINES

This department has the authority and the responsibility to ensure the safe and efficient flow of vehicular traffic. This may necessitate towing of immobile or abandoned vehicles from ways. The towing of vehicles must be done in accordance with Massachusetts General Laws, Codes of Massachusetts Regulations (C.M.R.'s) and local ordinances.

Abandoned vehicles can negatively impact the quality of life in a community. Vehicles left in parking lots or on public and private property, which fall into disrepair, promote the broken window theory of Community Policing. They contribute to a negative community atmosphere as well as creating an unnecessary burden to property owners and the public.

The purpose of this policy is to provide guidance to employees involved in facilitating the removal of vehicles by towing, as well as addressing abandoned vehicles.

## II. POLICY

It is the policy of this department to:

1. Facilitate the removal of vehicles which create a hazard to traffic from ways;
2. Quickly identify abandoned vehicles, identify and contact the owners to resolve the situation, prosecute offenders as appropriate, and remove abandoned vehicles before they lead to other problems.
3. Utilize professional and vetted towing companies that are authorized to tow by the Massachusetts State Police and;

4. Never, as the department, town, or individual employee, by contract, or otherwise, request or accept any payment, or anything of value in exchange for towing services.

### III. DEFINITIONS

- A. Abandoned Vehicle: Any vehicle that is apparently abandoned by its owner and standing for more than seventy-two hours upon a public or private way or on any property without the permission of the property owner or lessee.<sup>1</sup>
- B. Junk Car: Any vehicle which is abandoned by its owner and apparently is worth less than the cost of removal, storage and expenses incident to disposition.<sup>2</sup>
- C. Owner: Person or entity listed as the owner in the records of the Registry, or who last had possession of the vehicle, legally or otherwise.
- D. Parking Clerk: **Designated or appointed pursuant to M.G.L. c. 90 s. 21A ½** and shall supervise and coordinate the processing of abandoned motor vehicles.
- E. Hearings Officer: The parking clerk or designee.

### IV. PROCEDURES

#### A. Authority to Tow Vehicles Generally

1. Vehicles may be towed for the following reasons.
  - a. The vehicle is not properly registered or insured and on any way (uninsured must be towed).
  - b. The vehicle has been involved in a collision and is not safe to drive.
  - c. The vehicle constitutes an obvious hazard.
  - d. The vehicle is obstructing public travel.
  - e. The motor vehicle has been reported stolen or taken without the owner's consent and the owner cannot be contacted or cannot or will not respond to the scene within a reasonable period of time.
    - 1) For the safekeeping of the vehicle and / or its contents.
    - 2) The vehicle may contain evidence of a crime and cannot be processed at the scene.
  - f. The operator of the vehicle is taken into custody and the vehicle would be left:
    - 1) in a location hazardous to traffic;
    - 2) Unattended without the owners consent;
    - 3) In the care of an individual who is not authorized by the owner to operate the vehicle;



- 4) In the care of an individual who is not capable of lawful operation of the vehicle.
- g. The operator of the vehicle is not properly licensed, and the vehicle would be left unattended on a public way.
- h. The motor vehicle is unregistered and is on public land when deemed necessary for the protection of public safety.
- i. Adverse weather conditions or other emergency situation necessitates the removal of the vehicle from a way or public land.
- j. The owner, operator or person having control of the vehicle authorizes the tow.
- k. It is necessary to safeguard the vehicle and/or contents due to the inability, illness, injury or death of the operator, owner or person having control of the vehicle to adequately protect the vehicle and/or it's content from theft or destruction.
- l. When otherwise legally authorized.

## **B. Authority to Tow Vehicles f or Parking Violations**

### 1. AUTHORITY TO TOW, LOCAL ORDINANCE

- a. Vehicles may be towed for the following offenses.
  - 1) General Prohibition Tow Zone if so marked;
  - 2) Impeding snow or ice removal;
  - 3) Upon a sidewalk;
  - 4) Within a cross walk;
  - 5) Within twenty (20) feet of an intersection way (except alleys);
  - 6) Upon any way within ten (10) feet of a fire hydrant;
  - 7) Double parked;
  - 8) In front of a public or private driveway; and
  - 9) Leaving less than ten (10) feet of unobstructed lane.
- b. The following vehicles may not be towed for these offenses:
  - 1) Any government vehicle; and
  - 2) Any vehicle registered to a foreign consular corps or consular officer bearing a distinctive number plate or conspicuously marked.

### 2. AUTHORITY TO TOW, STATE HIGHWAYS

- a. Police officers have the authority to cite and/or tow vehicles parked in a prohibited manner for certain violations
  - 1) Impeding snow or ice removal;
  - 2) Within a crossover;

- 3) Upon any sidewalk;
  - 4) Within a cross walk;
  - 5) Leaving less than twelve (12) feet of unobstructed lane;
  - 6) Within twenty (20) feet of an intersection way (except alleys);
  - 7) Within ten (10) feet of a fire hydrant;
  - 8) Upon or in front of any private road or driveway without consent of the owner;
  - 9) Double parked;
  - 10) With one or more wheels more than twelve (12) inches from the curb unless otherwise permitted;
  - 11) On the roadway in a rural or sparsely settled district within any "No Passing Zone";
  - 12) For more than twenty-four (24) hours, without permission of the MassDOT;
  - 13) On any bridge or in any tunnel, or approaches to unless a sign permitting parking has been posted or a breakdown lane has been designated;
  - 14) In any acceleration or deceleration lane, on ramp, or off ramp of any express state highway; or
  - 15) Upon a safety rest area those vehicles left unattended for more than 30 consecutive minutes provided signs are posted notifying of the tow zone.
- b. EXCEPTIONS TO TOW AUTHORITY: The following vehicles may not be towed for these offenses:
- 1) Any government vehicle: and
  - 2) Any vehicle registered to a foreign consular corps or consular officer bearing a distinctive number plate or conspicuously marked.

### **C. Authority to Tow Snow or Recreational Vehicles**

1. Vehicles may be towed for the following offenses.
  - a. When the operator willfully neglects or refuses to obey the order of a police officer;
  - b. When the operator is arrested;
  - c. When the vehicle is abandoned;
  - d. If the vehicle is in an unsafe condition:
    - 1) Not displaying lights at night;
    - 2) Vehicle has a fuel leak;

- 3) Persons on board do not have proper head gear as required by M.G.L. c. 90B, §26
  - 4) Operating under the influence of drugs or alcohol;
  - 5) Reckless operation;
  - 6) Vehicle is not equipped with a spark arrestor;
  - 7) The vehicle is being operated on a way.
- e. Dangerous or prohibited operation: <sup>3</sup>
- 1) In a reforested or planted area causing damage to growing stock;
  - 2) Under the age of sixteen and one half on any public way, or under the age of fourteen unless directly supervised by an adult;
  - 3) On private land without permission;
  - 4) Harassing deer or other wildlife; or
  - 5) With a firearm not unloaded and cased (exception for paraplegic hunters M.G.L. c. 131, §65).

#### **D. Trespass by Motor Vehicle**

1. PRIVATE PROPERTY [61.4.3(B)]
  - a. An abandoned motor vehicle, left on private property for more than 72 hours, without permission of the person controlling the property may be removed as abandoned, provided that the abandoned vehicle procedure is properly followed, see below.
  - b. Any motor vehicle may be towed from private property as a trespass tow if the owner of the vehicle has been forbidden to park on the property either directly or by a posted notice (i.e., No Parking - No Trespassing sign). There is no 72-hour requirement on private property.<sup>4</sup>
2. PROPERTY OWNER'S RESPONSIBILITY
  - a. NOTICE TO VEHICLE OWNER: The owner must give permission for the vehicle to be towed, or:
  - b. NOTICE TO POLICE: The property owner must provide the department with the following information:
    - 1) The address from which the motor vehicle is being removed;
    - 2) The address to which the motor vehicle will be moved;
    - 3) The registration number (plate);
    - 4) The name of the owner or person in lawful control of the property; and
    - 5) The name of the person or tow company that will be towing the motor vehicle.
  - c. The towed vehicle shall be stored in a convenient place and the owner of the vehicle shall be liable for the tow and storage charges.

- d. Abandoning a motor vehicle on private property does not prevent police from charging the owner of the motor vehicle with Abandonment.<sup>5</sup>

## **E. Abandoned Motor Vehicles**

1. DOCUMENTATION [61.4.3(C)]
  - a. All vehicles towed will be documented on tow sheet.
  - b. Any inventories shall be done in accordance with the departmental policy on **Motor Vehicle Inventories** .
2. VEHICLES UNATTENDED FOR MORE THAN 24 HOURS
  - a. Officers shall address seemingly abandoned vehicles.
    - 1) Vehicle left unattended on a roadway in a hazardous location.
    - 2) Vehicle left unattended on a roadway for more than 24 hours.
    - 3) In response to a complaint of a citizen that a vehicle may be abandoned
  - b. Officers shall attempt to determine the owner, registration status of the vehicle, and the reason for being there.
    - 1) Unregistered vehicles on public ways should be removed immediately.
    - 2) Vehicles left in within the limits of any state highway for more than 24 consecutive hours may be towed by the police, with permission of a Supervisor or OIC. The following are exceptions:<sup>6</sup>
      - a) Any government vehicle.
      - b) Foreign consular diplomatic corps.
      - c) Foreign consular office.
    - 3) Vehicles in hazardous locations must be removed quickly by the owner or towed to negate the hazard.
    - 4) Vehicles on private property may be towed by the person having control of the property.
  - c. A log entry should be made to document the incident and the vehicle should be cited for parking violations, if any exist.
  - d. If the owner is not able to be contacted or the status of the vehicle cannot be discovered, the officer should follow up at the conclusion of the 24 hour period.
3. INVESTIGATION OF JUNK OR ABANDONED VEHICLES
  - a. OWNERSHIP DETERMINATION: Officers shall determine ownership and attempt to notify the owner by checking:
    - 1) Registration plate;
    - 2) Vehicle Identification Number (VIN);

- 3) Visible stickers, inspection or other type; and
- 4) Interior of vehicle for notes, letters, papers, materials, or other types of identification of owner.

**NOTE:** If any of the above results in the determination of the owner, that information shall be given to the tow facility, so that the tow facility may contact the owner also.

- b. VEHICLE CONDITION: If vehicle has physical conditions indicating abandonment, pictures of the vehicles may be taken for evidence.
  - c. SEARCH OF VEHICLE: A police officer may search an abandoned motor vehicle for evidence in an attempt to determine the owner and monitor the vehicle during the next three days.
  - d. IF OWNER CONTACTS DEPARTMENT: If within 3 days the owner contacts the department, [s]he will be ordered to remove the vehicle. The department's involvement is ended if the vehicle is removed.
4. PROCEEDINGS AGAINST OWNER
- a. The person who had last registered the vehicle may be cited under M.G.L. c. 90 s. 22C for abandonment of a motor vehicle.
  - b. A police officer shall attach a tag to the vehicle containing at least the following:
    - 1) Current date
    - 2) Vehicle Location
    - 3) Make
    - 4) Color
    - 5) Registration, VIN Number
    - 6) Department telephone number
    - 7) Hearing procedure for abandoned vehicles
    - 8) Warning that vehicle will be towed in a specified time
    - 9) Towed vehicle may be disposed of.
  - c. If the owner is identified, the officer shall send a notice to the owner, by first class mail, to the address listed in Registry records, stating the information above as well as the amount of fines and costs assessed and a date for a hearing with the parking clerk.
  - d. If the owner fails to appear at the scheduled hearing, the parking clerk shall notify the Registry, which will take administrative action.
5. TOWING ABANDONED VEHICLES [61.4.3(B)]
- a. Abandoned vehicle may be towed after 72 hours.

- b. **[THE SUPERINTENDANT OF HIGHWAYS OR OTHER]** shall be notified that such vehicle has been determined to be abandoned and may order the vehicle to be removed.
- c. Abandoned vehicles towed at the direction of a police officer shall be entered into the department Tow Log. [61.4.3(c)]

### **A. Release of Towed Vehicle**

1. It is the policy of this department to ensure that motorists taking charge of vehicles towed and impounded by this agency are properly licensed and fit to drive, and the vehicle properly registered and insured.
2. An operator of a vehicle towed pursuant to this policy shall when reasonable, receive a copy of the inventory form, which provides the instructions to allow for the vehicle to be released.
3. Prior to release, the owner/designated operator must appear at the Hadley Police Department with two licensed operators (including themselves) to confirm the status of the vehicle registration, and the licenses of the designated operator, as well as the person driving to the tow yard. They must also pay the \$20.00 administrative fee.
4. Tow releases are not to be issued over the phone, unless authorized by a supervisor. This does not relieve anyone of the responsibility to confirm the active status of the licenses/vehicle registration.
5. In the event a vehicle registration or any of the licensed persons appearing not having an active license, or if the 12-hour Melanie's Law, OUI/Breath Test Refusal hold has not elapsed, the release shall not be issued.
6. All vehicles towed as a result of impaired operation may be subject to a 12-hour hold to ensure that the suspected operator does not have access to the vehicle while still impaired. Release prior to this 12-hour hold may be authorized by a shift supervisor or OIC.

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<sup>1</sup> M.G.L. c. 90, §22C

<sup>2</sup> M.G.L. c. 90, §22C

<sup>3</sup> M.G.L. c. 90B, §26, authority to tow is derived from 323 CMR 3.04(1)(d). Termination as unsafe is authorized under 323 CMR 3.06. Unsafe is defined under 323 CMR 3.02.

<sup>4</sup> M.G.L. c. 266, §120D

<sup>5</sup> M.G.L. c. 90, §22C

<sup>6</sup> 720 CMR 9.04(l)

### Specific References/General Information

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## Seven Day Transfers of Registrations

In order for a transfer of registration to be 100% legal and valid, the driver of the vehicle must have in their possession the following;

- 1) An active registration from the vehicle which was traded in (no other registration is acceptable).
- 2) Proof of loss of possession of the old vehicle (this is usually accomplished by a form from a dealership)
- 3) Bill of Sale
- 4) Completed RMV-1 Form (you may see this completed by an insurance company)
- 5) Title (if purchased from a dealership on a loan, they may have bank paperwork)

You should highly scrutinize documents when a vehicle is purchased privately, as the owner sometimes does not lose possession of the old vehicle and/or won't have the forms filled out correctly. Sometimes this is accidentally, sometimes its purposefully. Generally vehicles purchased from a dealership are going to have the right paperwork. The intention of this grace period is to allow for the registration of the old vehicle to be transferred to the new. If there was no old vehicle traded, if the plates are not active or came off some other vehicle, if documents are not in possession, or aren't filled out appropriately, it is attaching plates and likely uninsured.

## Revoked Registrations for Insurance Cancellation (REVO/INSC)

When you have a REVO/INSC, this does not mean that the insurance is revoked or cancelled, it means that the registration is revoked because the insurance lapsed at some point. This is an automatic process through the RMV. When the insurance company reports a lapse in insurance, the RMV cancels the registration; but the process is not automatic when they fix their insurance. When the driver gets the insurance reinstated, they need to go to the RMV and have the registration re-activated. Someone who is REVO/INSC and provides proof of insurance is NOT legal to drive the vehicle. Don't let the driver show you an active insurance card on their phone and chock it up to an RMV error. They may not be 90/34J, but they are certainly 90/23 because they did not fix their reg.

Towing for Suspended/Revoked Reg/Uninsured.

If a vehicle is uninsured or has a suspended registration, you must tow to impound or to their home. It cannot be left in a parking lot (even with the business' permission) and it legally cannot be on any way public or private. They will not be able to fix it roadside.

### Plates

You may seize Massachusetts Plates that are Suspended/Revoked/Attached/Stolen. If its going to impound, you do not HAVE to seize Suspended/Revoked plates, the RMV will re-activate them. If its going to be towed home, you should seize the plates. In exchange for towing a vehicle home for other motor vehicle offenses that render the operator/owner/vehicle illegal to operate, you may ASK that they surrender the plates of their vehicle. If they do not consent, then they should be informed that the vehicle will be impounded. You may not seize any out of state plates unless they are illegally attached or stolen, and they should be entered as evidence, not thrown in the bin.



# IMPAIRED OPERATORS

POLICY & PROCEDURE NO. <b>5.05</b>	ISSUE DATE: 10/05/15
	EFFECTIVE DATE: 11/04/15
HADLEY POLICE DEPARTMENT	LAST REVIEWED DATE: 02/22/2019

## I. GENERAL CONSIDERATIONS AND GUIDELINES

In 2003, thirteen year old Melanie Powell was killed by a repeat drunk driver while walking to the beach. The efforts of her parents and grand-parents were the driving force behind the passage of Melanie's Law, which took effect in 2005.

This law changed the way police process persons arrested for operating under the influence of alcohol, increased penalties for those convicted of the crime, and increased the license suspensions of those who refuse to submit to a chemical test.

The law also introduced the use of ignition-interlocking devices to keep intoxicated offenders from starting their vehicles, as well as a provision for the forfeiture of vehicles owned by persons committing a fourth or subsequent offense.

## II. POLICY

It is the policy of this department to ensure persons identified as operating motor vehicles, boats, and recreational vehicles while under the influence of alcohol or drugs are removed from the roadway to further the safety of the general public. While the disposition of this type of offense is preferably arrest, officers are expected to use discretion and good judgment based on an offender's criminal history, level of cooperation, staffing/shift logistics/call volume, and the likelihood of a successful prosecution. [1.2.7]

## III. DEFINITIONS

- A. BAC: Blood Alcohol Content.
- B. BATS: Breath Alcohol Testing System.
- C. CDL: Commercial Driver's License.

## IV. PROCEDURES

### A. Operating Under the Influence of Alcohol [ 61.1.11]

1. OFFICER AWARENESS: Many traffic accidents, particularly those involving a fatality or personal injury, are directly attributable to persons driving under the influence of alcohol and/or drugs. In all contacts with violators, the officer should be aware of the possibility that the driver may be under the influence of alcohol or drugs.
2. APPLICABILITY: These procedures apply to operators charged for operating under the influence of alcohol or drugs under M.G.L. c. 90 (motor vehicles), §24 or M.G. L. c 90B, §8 (boats and recreational vehicles).
3. ENFORCEMENT OPTIONS
  - a. If the officer determines that the operator is under the influence of alcohol or drugs, appropriate enforcement action shall be taken:
  - b. Immediate arrest is the preferred method.
  - c. A criminal citation may be issued if circumstances do not allow for an arrest (for example, if an operator is admitted to a hospital and the officer has no means to effect an arrest). Refer to the department policy on **Detainee Processing** for procedures when handling persons charged with operating under the influence.
4. TRAINING: The department will ensure that sworn officers are trained in dealing with offenders suspected of driving under the influence of alcohol or drugs and in enforcement procedures, and will cooperate fully with other agencies and community groups to reduce and control this problem. This will include familiarity with the Standard Field Sobriety Test (SFST) developed by the National Highway and Traffic Safety Administration (NHTSA.)
5. PROCESSING ARRESTS: The following conditions shall apply to those arrested for driving under the influence of alcohol. For further information, see department policy on **Detainee Processing** .

### B. Identifying Impaired Operators

1. DRIVING BEHAVIOR: Officers should be observant of driver behavior that may be indicative of drug or alcohol impairment, including:<sup>1</sup>
  - a. Turning with wide radius;
  - b. Straddling center or lane marker;
  - c. Appearing to be drunk;
  - d. Almost striking another vehicle or object;
  - e. Weaving;
  - f. Drifting from side to side;
  - g. Rapid acceleration, deceleration;

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- h. Driving more than ten miles per hour under speed limit;
    - i. Tires on center or lane marker; and/or
    - j. Erratic braking.
  2. DRIVER CONTACTS: Officers should be observant during vehicle stops for indications of impairment, such as:
    - a. Odor of alcoholic beverage on operator's breath;
    - b. Eyes glassy or blood shot, pupils excessively constricted or open;
    - c. Poor coordination;
    - d. Slurred speech; and
    - e. Empty alcoholic beverage containers.
  3. FIELD SOBRIETY TESTING involves:
    - a. Reasonable suspicion;
    - b. Reasonable suspicion, not probable cause is necessary to administer field sobriety tests;<sup>2</sup> and
    - c. Testing: Officers may conduct field sobriety tests to make further observations of sobriety. Operators may not be compelled to perform such tests.
    - d. Some standard field sobriety tests include:
      - 1) HGN Testing;
      - 2) Walk and Turn;
      - 3) One Leg Stand; and
      - 4) Alphabet Test.
  4. ARRESTS: An operator arrested for OUI shall be processed according to department booking procedures. See department policy on **Processing Detainees**.
  5. MEDICAL CONDITIONS
    - a. Officers should be aware that some medical conditions may involve symptoms similar to alcohol intoxication. Such conditions include:
      - 1) Diabetes: if a diabetic condition is suspected, the officer must seek prompt medical attention for the operator;
      - 2) Seizure disorders;
      - 3) Psychiatric disorders; and
      - 4) Alzheimer's disease.
    - b. Operators who may create a hazard to others due to a medical condition may need to be evaluated for suitability to operate a motor vehicle. See the department policy on **Traffic Safety**.

### C. Chemical Tests Generally :

1. CONSENT: If a detainee consents to a breath test, there is no need for a new consent for the second test, any subsequent tests due to a failure in the testing process, or if taken to another facility for testing.
2. STATUTORY RIGHTS
  - a. RIGHT TO A POLICE ADMINISTERED BREATH TESTS: A defendant has no statutory or constitutional right to a police administered breath test.<sup>3</sup>
  - b. RIGHT TO AN ATTORNEY: A defendant does not have the right to have an attorney present while deciding whether or not to take a breath test.<sup>4</sup>
  - c. STATUTORY RIGHTS AND CONSENT FORM: (This was formerly known as "Form A).” An officer must read each section of the form to the defendant.
    - 1) RIGHT TO BE EXAMINED BY A PHYSICIAN: A person held at a police station or place of detention and arrested for OUI alcohol has the right to be examined by a physician of his or her choice at the person’s expense. The police official in charge of such station or place of detention, or his designee, must inform such person of that right immediately upon being booked, and shall afford the individual a reasonable opportunity to exercise it. Such person shall, immediately upon being booked, be given a copy of this section unless such a copy is posted in the police station or other place of detention in a conspicuous place to which such person has access. An opportunity to call a physician is usually sufficient.<sup>5</sup>
    - 2) RIGHT TO A TELEPHONE: A defendant has the right to make a phone call at his or her own expense within one hour of arrival at the police station.<sup>6</sup>
    - 3) REQUEST TO SUBMIT TO A CHEMICAL TEST: <sup>7</sup>
      - a) A defendant may take a chemical test if offered.
      - b) A defendant who takes a chemical test may obtain a comparison test at his or her own expense and may use the results of such test at a court hearing within ten days, to reinstate his/her license.<sup>8</sup>
    - 4) VEHICLE REQUIRING A CDL LICENSE TO OPERATE: This portion of the form explains the consequences for refusing a chemical test.
  - d. LOSS OF LICENSE:
    - 1) There is no obligation for an officer to explain to a defendant the length of loss of license, other than that it could be at least 180 days and up to a lifetime loss for a refusal.<sup>9</sup>
    - 2) No explanation is required to be given about suspensions or hearings.<sup>10</sup>

3. LICENSE SUSPENSIONS: Immediate license suspensions take place when OUI arrests are processed through the BATS system. (There is no fifteen day temporary license issued as was formally the case). Such suspensions are for:
  - a. Refusal to take a breath or blood test;<sup>11</sup>
  - b. A person over the age of 21 who obtains a reading of 0.08% or higher;<sup>12</sup>
  - c. A person under the age of 21 who obtains a reading of 0.02 or higher; and<sup>13</sup>
  - d. CDL: .04% or higher.<sup>14</sup>
4. VEHICLE FORFEITURES: Prosecutors may seek forfeiture of a vehicle after the 4<sup>th</sup> or subsequent offense.<sup>15</sup>

## D. Breath Test Operation

1. OPERATOR QUALIFICATION
  - a. CERTIFICATION: A breath test shall be administered by a trained and certified operator.
  - b. EXPIRATIONS: No breath test can be given once an operator's certificate has expired.
  - c. CERTIFICATE OF RECERTIFICATION: Effective January 1, 2006, no letter of recertification is issued. The officer's certification to administer breath tests is printed on the implied consent form.
  - d. MILITARY LEAVE: If an officer is called to active duty, upon return the officer must contact the Highway Safety Coordinator at the MPTC (617-727-3945) to arrange to complete the re-certification process. Such re-certification must be completed within sixty (60) days of the officer's return.
2. MEDICAL EXCEPTIONS: There are no medical exceptions for breath testing. If an asthmatic uses an inhaler, observe for fifteen minutes prior to testing.
3. TEST OPERATION
  - a. TESTING PROCEDURES: Breath testing shall be administered according to the methods approved by the Secretary of Public Safety and security.<sup>16</sup>
  - b. DETAINEE OBSERVATION: A detainee must be observed for at least fifteen minutes.
    - 1) If a person consents to a breath test, the observation period shall begin at the time of consent. This time shall correspond to the time entered on:<sup>17</sup>
      - a) The Statutory Rights and Consent Form; and
      - b) "First Time Observed" in BTS.
    - 2) If the detainee hiccups or burps, the observation time shall begin again.

- 3) If the officer believes that multiple hiccups or burps are intentional, it may be considered a refusal.<sup>18</sup>
  - c. DATA ENTRY: Some issues encountered while processing the defendant's identification are:
    - 1) ADDRESS CHANGE: During the breath test, enter the address which the subject currently lives.
    - 2) HYPHENATED NAMES: May be entered as written.
    - 3) NEVER LICENSED: If the defendant has never been licensed, enter nine 0's for the license number (000000000) and the present date as the date of expiration.
  - d. DEFENDANT BREATH SAMPLES:
    - 1) NUMBER OF SAMPLES: The breath test will normally consist of two samples.
    - 2) TEST RESULTS: Test results must be within +/- .02 of each other. If the samples are outside the +/- .02 range, a third test will be initiated.
    - 3) MAXIMUM RANGE: The range of measure for breath testing is 0.00 to 0.63. If the breath test reading is higher than the maximum, officers should provide the detainee with medical care immediately!
4. BREATH TESTS FOR PERSONS OVER AGE 21
    - a. BAC .05% OR BELOW: The arrestee shall be released from custody forthwith.
    - b. .06% or .07% BAC: There shall be no presumption of intoxication. The arrest and booking process shall continue.
    - c. For a blood alcohol reading of .08% or above, there shall be a presumption that the person is under the influence of intoxicating liquor.
  5. BREATH TESTS FOR PERSONS UNDER 21:
    - a. The blood alcohol content threshold remains the same as for an adult, and the detainee must be released.
    - b. For detainees under age eighteen (18), see the department policy on **Handling Juveniles** .
    - c. For a blood alcohol reading of .02% to .04%, the detainee is subject to an administrative suspension by the Registry. No criminal charges are forwarded to the court, and the defendant shall be released.<sup>19</sup>
  6. BREATH TESTS FOR CDL:
    - a. .01 to .03 (any detectable amount): Out of service order for 24 hours. Operator is released forthwith.<sup>20</sup>
    - b. .04 TO .05: Out of service order for 24 hours. Operator is released forthwith.<sup>21</sup>

- c. .05 OR HIGHER: Operator shall be processed as an arrest.<sup>22</sup>
- 7. LICENSE SEIZURES
  - a. The police officer administering a valid breath test shall **not** seize the defendant's operator's license.
- 8. EQUIPMENT PROBLEMS: If a detainee consents to a breath test and the equipment malfunctions, the department has an obligation to provide the detainee with the opportunity to take another test, including bringing the detainee to another department for testing. If the detainee refuses to go to another department, it shall be deemed a refusal.<sup>23</sup>

### **E. Blood Testing**

- 1. BLOOD TAKEN FOR MEDICAL TREATMENT: The record of a blood test taken for medical treatment is admissible as evidence and may be summonsed by the prosecutor.<sup>24</sup>
- 2. BLOOD UNDER IMPLIED CONSENT:
  - a. Defendant must be taken to a licensed medical facility for treatment.
  - b. Defendant must consent to the blood test.
- 3. MEDICAL EXCEPTIONS: Persons having a condition requiring anticoagulants SHALL NOT BE DEEMED TO HAVE CONSENTED TO A BLOOD TEST. <sup>25</sup>
  - a. Hemophiliacs
  - b. Diabetics
- 4. PROCESS FOR DRAWING BLOOD: The following procedures should be explained to the physician drawing the blood:
  - a. The area of the draw should be sterilized using a non-alcoholic solution.
  - b. Two tubes of blood containing a powdered anticoagulant should be submitted. No red stoppered test tubes for alcohol and drugs; no green stoppered test tubes for drugs.
  - c. Shake both tubes once received to activate the anticoagulant.
  - d. Mark the samples.
  - e. Refrigerate until they can be delivered to the State Police Crime Lab.

### **F. Refusals**

- 1. The officer before whom the refusal was made must fill out the Statutory Rights and Consent Form, indicating the defendant's refusal. The officer must sign the form.
- 2. Do not issue a temporary license.<sup>26</sup>
- 3. Provide the defendant with a written notice of suspension.<sup>27</sup>

4. Impound the vehicle driven by the operator, regardless of to whom the vehicle belongs. The operator shall be responsible for towing and storage. The vehicle must be held for twelve hours following a refusal.<sup>28</sup>
5. A test refusal shall be processed using the BATS system. The entry may be done by a certified operator using his or her operator's card or by a non-certified operator using a "Refuse Card," which allows an operator to only input an Implied Consent refusal.

### **G. Operating Under the Influence of Drugs**

1. **NO IMPLIED CONSENT:** Massachusetts law does not provide an implied consent statute for operating under the influence of drugs, and officers have no statutory authority to request any type of drug testing.
2. **OFFICERS' OBSERVATIONS:**
  - a. An officer's observations are critical in prosecuting cases for operating under the influence of drugs. Impairment with a low breath test may be indicative of drug impairment.
  - b. In all cases, a DRE (Drug Recognition Expert) should be requested after an arrest for OUI drugs and utilized if available.
  - c. If a blood sample is obtained, it will be screened for the class of drug requested by the officer. The officer's observations of the defendant, such as lethargy v. excitement, confusion, situational awareness, or pupil size and reaction, may be helpful for the chemist.
3. **DRUG TESTING:**
  - a. A urine test may indicate use; a blood test indicates impairment.
  - b. An officer may request a blood sample. The operator may consent or refuse.
4. **REFUSALS:** There are no license suspensions for refusing to submit to a blood test for drugs.
5. An application for an Immediate Threat License Suspension shall be considered.

### **H. Reports**

1. Accurate, timely, and complete reports are fundamental to the department's efficient and effective operation, as these reports form the basis for prosecution and ultimate adjudication of traffic offenses.
2. Officers shall complete all traffic citations and reports and submit them in a timely manner. See the department policy on **Incident Reporting**.

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<sup>1</sup> Harris, D. H., Howlett, J. B., and Ridgeway, R. G. The Visual Detection of Driving While Intoxicated.



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<sup>2</sup> Com. v. Eckert, 413 Mass 519 (2000).

<sup>3</sup> Com. v. Alano, 388 Mass 871 (1983).

<sup>4</sup> Com. v. Brazelton, 404 Mass 784 (1989).

<sup>5</sup> M.G.L. c. 263, §5A

<sup>6</sup> M.G.L. c. 276, §33A.

<sup>7</sup> M.G.L. c. 90, §24(4)(e).

<sup>8</sup> M.G.L. c. 90, §24(4)(e).

<sup>9</sup> 2006 Breath Test Operator Recertification Manual, Page 8, Prepared by the Massachusetts Office of Alcohol Testing (2006).

<sup>10</sup> 2006 Breath Test Operator Recertification Manual, Page 8, Prepared by the Massachusetts Office of Alcohol Testing (2006).

<sup>11</sup> M.G.L. c. 90, §24(4)(f)(1); M.G.L. c. 90F, §11(D); (E).

<sup>12</sup> M.G.L. c. 90, §24(4)(f)(2).

<sup>13</sup> M.G.L. c. 90, §24(4)(f)(2).

<sup>14</sup> M.G.L. c. 90F, §11(D); (E).

<sup>15</sup> M.G.L. c. 90, §24W.

<sup>16</sup> M.G.L. c. 90, §24K.

<sup>17</sup> 501 CMR 2.55; 2006 Breath Test Operator Recertification Manual, Page 9, Prepared by the Massachusetts Office of Alcohol Testing (2006).

<sup>18</sup> 501 CMR 2.55; 2006 Breath Test Operator Recertification Manual, Page 24, Prepared by the Massachusetts Office of Alcohol Testing (2006).

<sup>19</sup> M.G.L. c. 90, §24(1)(f)(1)(i).

<sup>20</sup> M.G.L. c. 90F, §10.

<sup>21</sup> M.G.L. c. 90F, §10; M.G.L. c. 90F, §11(D).

<sup>22</sup> M.G.L. c. 90F, §11(D).

<sup>23</sup> 501 CMR 2.56(2).

<sup>24</sup> Com. V. McCready, 50 Mass App. Ct. 521 (2000).

<sup>25</sup> M.G.L. c. 90, §24(4)(f)(1).

<sup>26</sup> M.G.L. c. 90, §24(1)(f)(1)(i).

<sup>27</sup> M.G.L. c. 90, §24(1)(f)(1)(ii)

<sup>28</sup> M.G.L. c. 90, §24(1)(f)(1)(iii).