

**SENECA FALLS POLICE DEPARTMENT
GENERAL ORDER**

General Order: 506	Rescinds: 07/01/13,05/08/18
Subject: Driving Under the Influence of Alcohol or Drugs	NYS Accreditation: 47.5
Effective Date: 03/12/2019 By Order Of: Stuart W. Peenstra, Chief of Police	

- I. **PURPOSE:** The purpose of this order is to provide guidance to officers investigating and making arrests for driving while intoxicated or impaired by drugs and/or alcohol.
- II. **POLICY:** It is the policy of the Town of Seneca Falls to investigate and prepare cases for the successful prosecution of the crime of driving while intoxicated.
- III. **PROCEDURE:**
 - A. **ON-VIEW DWI INVESTIGATION**
 1. Officers must develop probable cause in order to affect an authorized arrest for the charge of driving while intoxicated. The following procedures shall be used by officers during the investigation:
 - a. Observe the suspect vehicle. Indications of driver impairment may include:
 - i. Improper speed (e.g. driving too slowly or too fast).
 - ii. Improper lane usage (e.g. weaving, failing to keep right, driving on the shoulder).
 - iii. Improper passing (e.g. crossing solid double lines, leaving too much or too little clearance).
 - iv. Driver inattention (e.g. failing to signal, disregarding traffic control devices).
 - v. Poor or impaired judgment (e.g. turning wide or narrow, stopping short or overshooting intersections, improper starts, erratic movements).
 - vi. Motor vehicle accident (e.g. reported accident with operator at the scene or with reason to believe that operator had been involved in an accident, etc.).
 - vii. Alcoholic beverage containers in and/or around the vehicle.
 - b. Use caution when stopping a potentially intoxicated driver due to the unpredictable effects of alcohol and drugs on individuals. Note all unusual actions of the vehicle and operator during the stop.
 - c. Confirm the identity of the person operating the vehicle and gather evidence to show that the suspect is the only person who could have operated the vehicle.
 - d. Note all indications of intoxication exhibited by the suspect. Indications may include:
 - i. Odor of alcoholic beverage on the operator's breath.

- ii. Impaired speech (e.g. slurred, thick-tongued, slobbery and poorly enunciated), slow and deliberate.
 - iii. Facial coloring (e.g. pale, flushed, ruddy).
 - iv. Clothing condition (e.g. dirty, disheveled, sloppy, unkempt).
 - v. Appearance of eyes (e.g. bloodshot, watery, glassy, squinting).
 - vi. Unusual demeanor (e.g. belligerent, excited, sleepy, polite, fighting, crying).
 - vii. Inaccurate orientation (e.g. time, place, destination).
 - viii. Impaired psychomotor ability (e.g. difficulty finding and producing documents, difficulty-exiting vehicle).
- e. If the officer suspects the operator of the vehicle has been driving while impaired by alcohol or drugs.
- i. Question the operator as to his whereabouts and destination before the stop.
 - ii. Ask if the operator had been consuming alcohol or taking drugs.
 - iii. Ask the type, quantity and time since last alcohol intake that was consumed.
- f. Question the operator regarding the status of his driver's license. If the license is found to be suspended or revoked, ask the operator if he knew of the suspension or revocation.
- g. When appropriate, conduct the following three (3) standardized field sobriety tests **(47.5.A)**
- i. Horizontal Gaze Nystagmus, (if the officer is qualified to administer this test).
 - ii. Walk and turn.
 - iii. One-leg stand.
 - iv. Recitation of the alphabet may be used prior to having the driver exit the vehicle (the driver's speech and the order of recitation should be noted).
 - v. Preliminary Breath Test.
 - vi. If unable to administer the three standardized field sobriety tests then use an alternate test such as finger to nose or Rhomberg technique. The reason for using alternate test must be documented in the DWI Supporting Deposition.

B. ON-VIEW DWAI DRUG INVESTIGATION

1. Officers must develop probable cause in order to effect an authorized arrest for the charge of driving while ability impaired by drugs. The following procedures shall be used by officers during the investigation:

- a. Observe the suspect vehicle. Indications of driver impairment may include:
 - i. Improper speed (e.g. driving too slowly or too fast).
 - ii. Reaction time (e.g. steering, braking, accelerating, manipulation of vehicle).
 - iii. Improper lane usage (e.g. staying in lane, weaving, maintaining distance, failing to keep right, driving on the shoulder).
 - iv. Improper passing (e.g. crossing solid double lines, leaving too much or too little clearance).
 - v. Driver inattention (e.g. failing to signal, disregarding traffic control devices).
 - vi. Poor or impaired judgment (e.g. avoidance of potential hazards, anticipation, risk-taking behavior, inattention, decreased fear, exhilaration, loss of control, turning wide or narrow, stopping short or overshooting intersections, improper starts, erratic movements).
 - vii. Motor vehicle accident (e.g. reported accident with operator at the scene or with reason to believe that operator had been involved in an accident, etc.).
 - viii. Drugs (illicit or prescribed as defined in PHL § 3306) in and/or around the vehicle.
- b. Use caution when stopping a potentially impaired driver due to the unpredictable effects of drugged drivers. Note all unusual actions of the vehicle and operator during the stop.
- c. Confirm the identity of the person operating the vehicle and gather evidence to prove that the suspect is the only person who could have operated the vehicle.
- d. Note all indications of impairment exhibited by the suspect. Indicators for CNS depressants, CNS stimulants, Hallucinogens, Dissociative Anesthetic, Narcotic Analgesics, Inhalants and Cannabis may include any of the following:
 - i. CNS depressants: wide variety of emotional effects (euphoria, depression, laughing and crying for no reason). Reduced ability to divide attention, disoriented, sluggish, thick, slurred speech, drunk-like behavior, droopy eyes, fumbling, relaxed inhibitions, slowed reflexes, uncoordinated, drowsiness, gait ataxia (rubber legged).
 - ii. CNS stimulants: Restlessness, body tremors, excited, euphoric, talkative, exaggerated reflexes, anxiety, bruxism (grinding teeth), redness to nasal area, runny nose, loss of appetite, increased alertness, dry mouth, irritability.
 - iii. Hallucinogens: Hallucinations, paranoia, nausea, perspiring, dazed appearance, flashbacks, body tremors, uncoordinated, disoriented,

- memory loss, synesthesia (mixing of the senses), and difficulty in speech.
- iv. Dissociative Anesthetic: Perspiring, blank stare, cyclic behavior, chemical odor, increased pain threshold, incomplete verbal responses, warm to the touch, repetitive speech, hallucinations, confused, possibly violent and combative, “moon walking.”
 - v. Narcotic Analgesics: Droopy eyelids, “on the nod”, drowsiness, depressed reflexes, dry mouth, low, raspy, slow speech, euphoria, fresh puncture marks, itching, nausea, track marks.
 - vi. Inhalants: Confusion, flushed face, intense headaches, bloodshot, watery eyes, lack of muscle control, odor of substance, non- communicative, disorientation, slurred speech, possible nausea, possible residue around mouth and nose.
 - vii. Cannabis: Marked reddening of the conjunctiva, odor of marijuana, marijuana debris in the mouth, body tremors, increased appetite, relaxed inhibitions, disoriented, possible paranoia, impaired perception of time and distance, eyelid tremors.
- e. The combination of CNS depressants may produce a synergistic (additive) effect. With poly-drug use (ingesting two or more different drug categories) the drugs may work independently, however, the body will exhibit a combination of the effects of each drug. There are four types of combined effects that can, and generally, will occur when two or more drug categories are used together (i.e. null effect, overlapping effect, additive effect or antagonistic effect).
 - f. If the officer suspects the operator of the vehicle has been driving while impaired by drugs or a combinations of drugs:
 - i. Question the operator as to his whereabouts and destination prior to the stop.
 - ii. Ask if the operator had been drinking or using drugs.
 - iii. Ask the type, quantity and time when the drug was consumed.
 - g. When appropriate, conduct the following three (3) standardized field sobriety tests: **(47.5.A)**
 - i. Horizontal Gaze Nystagmus
 - ii. Walk and turn.
 - iii. One-leg stand.
 - iv. Preliminary Breath Test.
 - v. If unable to administer three standardized field sobriety tests then use an alternate test such as finger to nose or Rhomberg technique. The reason for using an alternate test must be documented in the DWI Supporting Deposition.

- vi. A Drug Recognition Expert (DRE) may be utilized when available to assist with determining specific drug influence. **(47.5.C)**

C. CHARGING DWI OR DWAI

1. Reasonable or Probable cause shall be determined by viewing the totality of the circumstances surrounding the incident, which when taken together, indicate that the operator was driving in violation of section eleven hundred ninety two of the NYS VTL. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this article or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle while impaired by the consumption of alcohol or drugs or intoxicated at the time of the incident.
 - a. Always attempt to administer the chemical test via DMT as outlined in section F.1. If the driver refuses, refer to Chemical Test Refusal as outlined in section K.
 - b. 1192.2 – This would be appropriate when you have an actual BAC to work with. If the person registers .08% of one per centum or more by weight of alcohol or higher as shown by a chemical analysis.
 - c. 1192.2a – This would be appropriate when you have an actual BAC of .18% of one per centum or more by weight of alcohol or higher as shown by a chemical analysis.
 - d. 1192.2b – This would be appropriate when the vehicle is being operated in violation of 1192.2, 1192.3, 1192.4 and 1192.4a while a child who is fifteen years of age or less is a passenger in the motor vehicle. This would be charged in addition to the underlying DWI/DWAI charge.
 - e. 1192.3 – This would be appropriate when the driver is clearly intoxicated by alcohol and the intoxication is enough to substantiate an arrest for DWI based upon common law principles. This charge would be in addition to an 1192.2 or 1192.2a charge if so applicable. You would not charge this as an underlying offense for a DWAI related investigation.
 - f. 1192.4 – This would be appropriate when the driver is clearly impaired and there is probable cause to substantiate the driver's impairment is based upon the use of a scheduled drug and not alcohol. Under these circumstances no 1192.3 ticket shall be issued. This charge would necessitate a blood draw.
 - g. 1192.4(a) – This would be appropriate when the driver exhibits signs of both intoxication (alcohol) and impairment (drug); however, the intoxication alone is not enough to substantiate a charge of 1192.3, because the combined effect of the alcohol and a scheduled drug is the cause of the level of impairment. Under these circumstances, no 1192.3 ticket shall be issued. This charge would necessitate a blood draw.
 - h. In a situation (e.g. crash) where the driver is under the influence of alcohol and an 1192.3 UTT was issued, but the toxicology later reveals the driver

was also under the influence of a drug, then a follow up with a UTT for 1192.4(a) would be appropriate.

- i. If, based on toxicology test, the driver had a BAC $<.08$; however, the driver was also impaired by drug(s), then a follow up UTT for 1192.4(a) would be appropriate.
- j. In a crash with no evidence of alcohol consumption, but there were drugs or drug paraphernalia in the vehicle and drug use is suspected, we can ask for consent to draw blood for investigatory purposes without first arresting the driver. Upon receipt of the test results follow up with appropriate arrest. If the driver refuses, refer to section K of this order regarding refusals.

D. DWI/DWAI ACCIDENT INVESTIGATION

1. When investigating motor vehicle accidents not witnessed by an officer, the burden of proof regarding vehicle operation and operator intoxication/impairment becomes more complex. Therefore, officers must obtain as much evidence as possible to identify the operator and the degree of intoxication/impairment of the operator. When investigating accidents in which intoxication /impairment is a factor, officers shall:
 - a. Ask the occupants who the operator was, and if an operator comes forward, record his response for use as an admission. Officers shall attempt to secure a written statement from the operator detailing his operation, extent of intoxication/impairment, and actions leading up to the accident.
 - b. Question others at the scene who might have witnessed the vehicle's operation, as well as the passengers in all the involved vehicles, and ask them to identify the operator. Successful identification will require written statements from the witnesses.
2. If the operator does not come forward and the investigating officer has grounds to believe that the operator of the vehicle has left the scene, attempt to ascertain by investigation the probable location of the operator. The following are some guideline steps to follow:
 - a. Check the suspected operator's residence to ascertain who was in possession of the vehicle, and if the operator has contacted the residence. If so, attempt to ascertain the current location of the operator.
 - b. Check locations near the scene of the accident to which the operator may have had access, and interview any witnesses who might have had contact with him.
 - c. Check with area hospitals and ask if they might have had contact with the operator.
3. If the operator is found at a location other than the accident scene and by their own admission have not consumed any alcoholic type beverages or drugs since the accident then:
 - a. Administer standardized field sobriety tests. If the operator fails the tests, effect the arrest for DWI, DWAI, or DWI/Drugs.

- b. Conduct the chemical breath (alcohol) or blood test (alcohol and/or drugs) as soon as practical.
4. Officers shall attempt to obtain physical evidence at the accident scene that would tend to show:
 - a. Lack of attention by the operator (e.g. no skid marks, passed stop sign).
 - b. Imprudent speed (e.g. excessive skid marks, high force of resistance on impact).
 - c. Improper lane usage (e.g. impact on opposite side of roadway, tracks in snow, point of impact to other vehicle(s), etc.).
5. Officers shall note injuries to the operator and others involved in the accident.
6. If the operator has been injured, it is essential that the investigation not interfere with medical treatment. To this end, officers shall coordinate their investigations with the attending medical personnel. This can normally be accomplished by informing medical personnel of the officer's interests in the operator.
7. If the operator is unconscious and the officer believes that an arrest is warranted, the officer shall place the operator under arrest and direct hospital personnel to withdraw a blood sample. Because some hospitals do not realize that they are authorized to withdraw blood under these circumstances, they may refuse to draw the blood sample. In such cases, the officer will contact his/her supervisor, or in absence of, the Lieutenant.

E. CUSTODIAL STAGE

1. During the custodial stage, officers shall complete the necessary procedures instrumental in the arrest. The officer shall also attempt to obtain additional evidence to support the prosecution. The following procedures and guidelines shall be followed during the custodial stage:
 - a. Place the suspect under arrest and handcuff him or her.
 - b. When appropriate and authorized, conduct a search of the interior of the defendant's vehicle for any evidence of the crime.
 - c. Tow the defendant's vehicle in accordance with the provisions of General Order #511 "Towing, Impoundment and Seizure of Motor Vehicles."
(47.5.E)
 - d. Conduct a DMV computer check to ascertain the status of the defendant's license and/or whether a previous conviction for driving while intoxicated exists.
 - e. Conduct a chemical breath test for alcohol or blood draw for alcohol and drugs or just drugs.
 - f. Book the defendant in accordance with established department procedures.
2. If the DMV computer check shows that the defendant has been convicted within the last ten (10) years for Section 1192. 2, 3, or 4 of the NYS Vehicle and Traffic Law, or convicted for DWI in any other state in the preceding ten (10) years:

- a. Complete a long form information charging the defendant with felony driving while intoxicated.
 - b. Request a Certified Abstract of the defendant's operating record from DMV to substantiate the charge of felony driving while intoxicated.
3. If the defendant is to be released following the arrest process, the officer shall inform the defendant as to the charges against him, along with the court date and when possible, shall release the defendant to a responsible third party (e.g. friend, relative, neighbor, acquaintance). **(47.5.D)**

F. CHEMICAL TESTS (47.5B)

1. Officers shall ask the defendant to submit to a chemical test of his/her breath, blood, or urine for alcohol and/or drugs. If the defendant indicates a refusal by a negative response, makes an uncertain or ambiguous response, or remains silent, then officers shall read the following chemical test warning to the defendant:
 - a. You are under arrest for driving while your ability is impaired by the use of drugs or alcohol.
 - b. A refusal to submit to a chemical test or any portion thereof will result in the immediate suspension and subsequent revocation of your license or operating privilege, whether or not you are found guilty of the charge for which you were arrested.
 - c. Your refusal to submit to a chemical test, of any portion thereof, can be introduced into evidence against you at any trial proceeding or hearing resulting from this arrest.
 - d. Will you submit to a chemical test to determine the alcohol or drug content of your blood?
2. Any response other than an affirmative (including replies such as "maybe" or "I don't know") shall be construed as a refusal to submit to the chemical test and the response and time of the refusal shall be noted. Officers should make three (3) attempts to secure an affirmative response within a reasonable period of time, by reading the warning and noting the response and time of each reading.
3. If the defendant requests the right to consult with an attorney, he shall be allowed a reasonable amount of time to do so. If the defendant is unable to contact counsel, he must make the decision regarding the test for himself.
4. Once the defendant agrees to submit to a chemical test, the test shall be administered as soon as possible. Delays in administering the test may result in lower test results and, in some cases, may affect the relevance of the test.
5. The arresting officer shall choose the type of test to be administered and the person who will administer it. The defendant must submit to the test chosen by the officer, and failure to do so shall constitute a refusal.
6. Whenever the results of the chemical test do not accurately reflect the defendant's degree of intoxication, or the officer suspect's intoxication due to drugs, the

defendant shall be requested to submit to a blood test which will be analyzed for drugs other than alcohol. This shall constitute a different arrest and the defendant must again submit to a chemical test.

7. The chemical breath test shall be the primary chemical test administered by the department. Other tests may be used only if special circumstances exist. When administering a chemical breath test, officers shall:
 - a. Visually inspect the defendant's mouth for foreign objects.
 - b. Request the defendant to remove all dental appliances and other objects from his mouth, as this will only be in his best interest.
 - c. If the defendant does not want to remove any dental appliances or other objects, request that the defendant rinses his mouth out with water prior to submitting to a chemical test.
 - d. Observe the defendant for twenty (20) minutes prior to administering the test to ensure that the defendant does not eat, drink, smoke, vomit, burp or place anything in his mouth.
 - e. Visually check the defendant's mouth again for regurgitate or vomit. If regurgitate or vomit is present, start twenty (20) minute observation period over again, once the defendant has rinsed out his mouth with water.
 - f. Indicate in the notes portion of the D.W.I. packet if the defendant had dentures or dental appliances and whether or not he removed them. Indicate whether or not the defendant rinsed his mouth with water if he refused to remove dentures or dental appliances.
8. If the chemical breath test is to be used, the test shall be administered by a sworn member of the department, who is certified to perform a chemical breath test.
9. The chemical breath test will be administered in accordance with the procedures established by the New York State Department of Health.
10. As part of the chemical breath test process, sworn officers certified to perform such tests will be responsible to maintain custody and control of any record(s) which document(s) the results of the chemical breath test. The documentation shall be included in the case folder and will then be submitted for review and approval in accordance with General Order #401 "Investigative Function."

G. URINE TESTS (47.5.F)

1. When an alcohol chemical test is impractical or impossible, officers may as a last resort, due to the biological hazard aspect, and with permission of the Supervisor, substitute a urine test. Urine samples must be obtained by an officer of the same sex as the suspect will be in a private setting.
 - a. Urine samples must be obtained by the arresting officer (or an officer of the appropriate sex).
 - b. A supply of vials for the collection of urine samples shall be maintained in the Evidence Process Room #122.

- c. The administering officer shall attempt to obtain two (2) urine samples at thirty (30) minute intervals. If the defendant is unable or unwilling to provide a second sample, the first sample shall be submitted with an explanation describing the defendant's inability or unwillingness to provide a second sample.
- d. The vial(s) containing urine samples shall be secured in a small evidence bag, and the officer shall seal the bag and write his initials, shield number, date, and military time across the seal using a suitable marking pen. The sample shall be handled as evidence and submitted to the NMS laboratory in accordance with department procedures.

H. BLOOD TESTS (47.5.F)

1. When a chemical breath test or urine test is impractical or impossible, or when drugs are suspected, officers may utilize a blood test.
 - a. Blood samples must be drawn from the defendant by a licensed physician or registered nurse, registered physicians assistants, advanced EMT's and certified nurse practitioners or Phlebotomist.
 - b. The physician or nurse shall be directed to secure the blood sample in a departmentally approved blood kit. The accepting officer shall secure the kit from the physician or nurse and seal the kit per instructions to include the appropriate legal seal.
 - c. Blood samples shall be handled as evidence and shall be submitted to the NMS laboratory in accordance with set procedures as soon as practical. The blood kit should be secured in the refrigerator located in the Evidence Process Room #122.

I. COMPULSORY CHEMICAL TESTS (47.5.F)

1. Whenever an accident results in a serious physical injury or death to a person other than the suspect, a chemical test may be administered without the consent of the suspect.
 - a. If the suspect refuses to submit to a chemical test for alcohol and/or drugs under these circumstances, the investigating officer shall:
 - i. Contact the District Attorney and advise him of the circumstances attendant with the arrest.
 - ii. Complete the "Oral Application for a Court Order."
 - iii. Contact a Supreme Court or County Court judge, and read the "Oral Application for a Court Order" to him. The judge will decide whether to issue a court order to have blood or urine samples taken.
 - b. If the judge issues a court order, the officer shall obtain the judge's signature on the order. In some cases, the judge may authorize the arresting officer to sign the judge's name to the order.

- c. The defendant shall be transported to a local hospital, if necessary, to obtain the chemical test sample. The Court Order shall be presented to the attending physician, who then must secure a blood or urine sample. The sample must be secured, even if it must be secured against the defendant's will.
- d. Within seventy-two (72) hours, the arresting officer shall provide the issuing judge with a "Bill of Particulars," which must contain those facts which were the basis for the officer's reasonable cause to believe that the operator was under the influence of alcohol and/or drugs. The officer must additionally provide any depositions which support his belief.

J. CHEMICAL TEST REFUSALS

1. If a defendant refuses to submit to a chemical test for alcohol and/or drugs, the Department of Motor Vehicles has prescribed procedures that must be followed. If a defendant refuses to submit to a chemical test, the arresting officer shall:
 - a. Complete NYS DMV form AA-134, "Report of Refusal to Submit to Chemical Test" form and ensure the multi-part form is distributed as follows:
 - i. Green copy to the case folder.
 - ii. White and Pink copy to the court.
 - iii. Yellow copy is retained in the case folder and then brought to the DMV hearing by the arresting officer. Following the hearing, if the hearing judge does not retain the yellow copy, the officer shall return the form to the case file.
 - b. Upon arraignment, the court will complete the NYS DMV AA-137, "Notice of Temporary Suspension and/or Hearing" form.
 - c. At the time of arraignment, the judge may suspend and, if possible, secure the defendant's license (out of state licenses are not surrendered).

K. TRAINING

1. The Training Officer shall identify the training needs for traffic related activities and arrange necessary training through the Lieutenant. Training shall include, but need not be limited to:
 - a. Radar operator's course.
 - b. Breath test operators course.
 - c. Standardized Field Sobriety Test course.