

## Impaired Driving

### 503.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of operating while under the influence of an intoxicant or drug (OWI).

### 503.2 POLICY

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

### 503.3 INVESTIGATIONS

Officers should not enforce OWI laws to the exclusion of their other duties unless specifically assigned to an OWI grant or task force related assignment. However, all officers are expected to enforce these laws with due diligence.

The Patrol Captain will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any OWI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative unless additional detail is needed or appropriate to ensure a complete investigation. Information that should be documented includes, at a minimum:

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

### 503.4 FIELD TESTS

The Patrol Captain should identify standardized FSTs and any approved alternate tests for officers to use when investigating violations of OWI laws.

### 503.5 CHEMICAL TESTS

A person implies consent under Wisconsin law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Wis. Stat. § 343.305):

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- (a) The officer has arrested the person for operating a motor vehicle while under the influence of an intoxicant, controlled substance, or any other drug.
- (b) The officer has arrested the person for operating a motor vehicle with a detectable amount of a restricted controlled substance in the person's blood.
- (c) The officer has arrested the person for operating a motor vehicle with a prohibited alcohol concentration.
- (d) The officer has arrested a person under the age of 21 who has any detectable amount of alcohol in his/her system.
- (e) The officer has arrested a person who was operating a commercial motor vehicle while having an alcohol concentration of 0.04 or more.
- (f) The officer has arrested the person for causing injury to another person while OWI or with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his/her blood.
- (g) The officer has arrested the person for causing injury to another person while operating a commercial motor vehicle with an alcohol concentration of 0.04 or more.
- (h) The officer has arrested the person for a violation of Wis. Stat. § 940.25 (injury by intoxicated use of a vehicle).
- (i) The officer has arrested the person for a violation of Wis. Stat. § 940.09 (homicide by intoxicated use of vehicle or firearm).
- (j) The person was involved in an accident resulting in substantial bodily harm to any person and the officer detects any presence of alcohol, a controlled substance, a controlled substance analog, or other drug (Wis. Stat. § 343.305(3)(ar)).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g. the person is unconscious and exigent circumstances can not be articulated) the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample as noted in Section 503.6.2.

The Beloit Police Department shall utilize blood samples as the primary chemical test required of persons arrested for any of the above violations pursuant to the implied consent law.

#### 503.5.1 BREATH SAMPLES

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

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

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### 503.5.2 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Wis. Stat. § 343.305(5)(b)). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task (Wis. Stat. § 343.305(5)(b)).

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

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

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

### 503.5.3 STATUTORY NOTIFICATIONS

An officer requesting that a person submit to a chemical test shall read to the person the mandatory statutory warning provided by Wis. Stat. § 343.305(4).

### 503.5.4 URINE SAMPLES

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

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample unless a facility is available that is designed to prohibit contamination or misrepresentation of the urine sample. Beloit Memorial Hospital has a room for this purpose, which may be utilized in lieu of a witnessed sample. The arrestee tested should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

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

## **503.6 REFUSALS**

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

- (a) Advise the arrestee of the requirement to provide a sample (Wis. Stat. § 343.305).
- (b) Audio- and/or video-record the admonishment and the response when it is practicable.
- (c) Document the refusal in the appropriate report.
- (d) Request a search warrant to obtain a blood sample and follow provisions of Section 503.5.2. Computer equipment shall be assigned to Beloit Memorial Hospital to facilitate electronic search warrant requests.

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#### 503.6.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall serve the person with the notice of intent to revoke the person's operating privilege (Wis. Stat. § 343.305).

The officer shall forward copies of the notice to the appropriate prosecuting attorney, as well as the Wisconsin Department of Transportation (WisDOT), in the manner prescribed by WisDOT. If the person was operating a commercial motor vehicle, the officer shall issue the person a 24-hour out-of-service order (Wis. Stat. § 343.305(9)).

#### 503.6.2 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer shall request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video when practicable.
- (c) Ensure that the blood sample is taken in a medically approved manner.
- (d) Ensure the forced blood draw is recorded on audio and/or video when practicable.
- (e) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances.
  1. In first-time OWI cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  2. In misdemeanor and felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (f) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

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

Unless exigent circumstances exist, a search warrant shall be obtained prior to obtaining a blood draw due to a refusal, the person's inability to withdraw consent (unconscious driver), or through force. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. However, exigency may be established by the existence of a totality of special facts, such as an unconscious driver, dissipating alcohol or controlled substances in the person's bloodstream and a pressing health, safety, or law enforcement need that would take priority over a warrant application, such as a related accident investigation or medical treatment of the person. In such circumstances, officers shall thoroughly document the exigent circumstances present.

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### **503.7 ARREST AND INVESTIGATION**

The investigation of all OWI offenses shall include documentation in the officers report regarding the location the offender last frequented prior to the traffic stop or crash that led to the OWI arrest. This includes licensed premises, such as taverns, convenience stores, as well as private homes in which the offender may have consumed or purchased alcohol or other controlled substances that led to the impaired driving. The Beloit Police Department shall work cooperatively with county health providers and/or any related research entities to identify consistent over-servers of alcohol or distributors of controlled substances.

#### **503.7.1 OFFICER RESPONSIBILITIES**

If a chemical test indicates the presence of a controlled substance or a prohibited alcohol concentration, the officer shall forward the result to WisDOT (Wis. Stat. § 343.305(7)). The person shall be informed that his/her driving privilege will be administratively suspended for six months and that the person has the right to an administrative hearing. The form to request the administrative review shall be provided to the person (Wis. Stat. § 343.305(8)). If the person was operating a commercial motor vehicle, the officer shall also issue the person an out-of-service order.

#### **503.7.2 PRELIMINARY BREATH TESTING**

An officer who has probable cause to believe that a person has committed OWI or where the officer detects any presence of alcohol, a controlled substance or any other drug on a person operating a commercial motor vehicle, may request that the person submit to a preliminary breath test (PBT). The result of the PBT may be used by the officer in deciding whether to arrest the person and whether to require or request additional chemical testing under Wis. Stat. § 343.305(3). A person may refuse to take the PBT (Wis. Stat. § 343.303).

#### **503.7.3 ADDITIONAL TESTING**

If a person submits to a chemical test requested pursuant to the implied consent law, he/she is entitled to a reasonable opportunity, upon request, to have additional chemical testing done (Wis. Stat. § 343.305(5)). The Department's alternate test, upon request of the violator and submission to the primary blood draw, is urine analysis.

#### **503.7.4 ARRESTEE RELEASE**

If allowed by the rules of the court, a person arrested for OWI may be released to a responsible adult. The individual to whom the person is released is required to sign an OWI Responsibility Release containing his/her name and address, and that he/she will be responsible for the person.

A person arrested for OWI who is unable to be released to a responsible adult may not be released until 12 hours have elapsed or until a chemical test administered under Wis. Stat. § 343.305 shows a blood alcohol content of less than 0.04 (Wis. Stat. § 345.24).

All persons arrested for OWI shall be booked prior to release pursuant to the Traffic Function & Responsibility Policy, Section 500.3.4.

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### 503.7.5 CRASHES

Officers investigating a person for OWI shall make all reasonable efforts to obtain a chemical sample if the person was involved in a crash that resulted in a fatality or serious physical injury (Wis. Stat. § 343.305(2)).

### 503.7.6 QUALITY ASSURANCE

This department shall utilize a quality assurance program conducted by quality assurance specialists or operators regarding devices that are used to conduct alcohol concentration determinations, and shall generate records of periodic maintenance of those devices pursuant to any applicable state law (Wis. Stat. § 343.305(6)).

### 503.8 RECORDS BUREAU RESPONSIBILITIES

The Records Supervisor shall ensure that:

- (a) All case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office and WisDOT (Wis. Stat. § 343.305(7); Wis. Stat. § 343.305(8); Wis. Stat. § 343.305(9)).
- (b) All appropriate reports and documents related to administrative license suspensions are forwarded to WisDOT.

### 503.9 ADMINISTRATIVE HEARINGS

Any officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify their supervisor and the prosecuting attorney.

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

### 503.10 TRAINING

The Inspector or designee should ensure that officers participating in the enforcement of OWI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to OWI investigations. The Inspector or designee should confer with the prosecuting attorney's office and update training topics as needed.