

Geneva Police Department GENERAL ORDERS		ALCOHOL AND DRUG RELATED TRAFFIC ENFORCEMENT	
<input type="checkbox"/> new: <input checked="" type="checkbox"/> rescinds: Policy & Procedure 47.5 <input type="checkbox"/> amends:		cross-reference: G.O. 501; G.O. 505; G.O. 510; G.O. 600; G.O. 620; G.O. 712; G.O. 905	
effective date: 5.18.05		issue/amend date: 5.18.05 / 5.3.11 / 10.26.16 / 6.30.20	
		Accreditation/Recognition standards: C.A.L.E.A.: NYS L.E.A.P.: 47.5	

I. PURPOSE	The purpose of this General Order is to establish and describe policies and procedures for the investigation, arrest and processing of impaired and intoxicated drivers.
II. POLICY	It is the policy of the Geneva Police Department (GPD) to enforce the New York State Vehicle and Traffic Laws (NYS V&T) pertaining to the operation of a motor vehicle under the influence of alcohol and drugs and to investigate and prepare cases for the successful prosecution of those laws.
III. DWI INVESTIGATIONS	<p>A. Detecting the Impaired Driver</p> <ol style="list-style-type: none"> 1. Officers must develop probable cause in order to effect an authorized arrest for driving while intoxicated/impaired. The following observations or indications should be used in the decision to take enforcement action. <ol style="list-style-type: none"> a. Improper speed (e.g. driving too slow or too fast); b. Improper lane usage (e.g., weaving, failing to keep right, driving on the shoulder of roadway, drifting); c. Improper passing (e.g. crossing double solid lines, leaving too much or too little clearance); d. Driver inattention (e.g. fail to signal, disregarding traffic control devices, headlamps off, failure to dim headlamps for oncoming traffic); e. Poor or impaired judgment (e.g. wide or narrow turns, erratic movements, accelerating or decelerating rapidly, improper starts, slow response to traffic signals, braking erratically, following too close). <p style="margin-left: 40px;"><u>Note:</u> Notwithstanding the above, Officers shall be alert for any indication of impaired driving, day or night, whether encountered as a result of an enforcement stop, in connection with a motor vehicle accident or merely on the occasion of rendering assistance to a motorist.</p> 2. 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. <i>See G.O. 600 – Traffic Enforcement and Uniform Traffic Ticket Procedures.</i> 3. 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. This is especially important in cases involving motor vehicle accidents when operation of the vehicle has not been witnessed by the Officer.

**III. DWI
INVESTIGATIONS
(CONT.)**

4. Note all indications of intoxication exhibited by the suspect. Indications may include:
 - a. Odor of alcoholic beverage on the operator's breath;
 - b. Impaired speech (e.g., slurred, thick-tongued, poorly enunciated);
 - c. Facial coloring (e.g., pale, flushed, ruddy);
 - d. Clothing condition (e.g., dirty, disheveled, sloppy, unkempt);
 - e. Appearance of eyes (e.g., watery, bloodshot, glassy, squinting, pupil size);
 - f. Unusual demeanor (e.g., belligerent, excited, sleepy, polite, fighting, crying);
 - g. Inaccurate orientation (e.g., time, place, destination);
 - h. Impaired psychomotor ability (e.g. difficulty finding and producing documents, difficulty exiting vehicle).

5. Question the operator as to his/her whereabouts and destination before the stop. Ask the operator if he/she has been consuming alcohol/drugs and if so, where, what and how much was consumed. His/her answer, if pertinent, should be recorded for subsequent notice to the defendant under Section 710.30 of the CPL.

6. When appropriate, the Officer shall request at least three (3) of the following psychomotor tests and the results of same recorded on the GPD DWI Investigative Notes Card:
 - a. Walk and turn;
 - b. One leg stand;
 - c. Horizontal Gaze Nystagmus (If officer is trained and certified in same);
 - d. Finger to Nose;
 - e. Modified Romberg Balance;
 - f. Lack of Convergence;
 - g. Any other psychomotor test that the officer is trained in at the discretion of the Officer.

7. In the event an accident is involved and the arresting Officer did not witness the accident, the Officer shall:
 - a. Ask the occupants who the operator was, and if the operator comes forward, record his response for use as an admission. Additionally, the Officer shall attempt to secure a written statement or oral admission from the operator detailing his operation, extent of intoxication, if any drugs were used and method of ingestion, and actions leading up to the accident.
 - b. Question others at scene who might have been witnesses to the vehicle's operation, as well as passengers in all the involved vehicles and ask them to identify the operator. Secure supporting depositions from all witnesses.
 - c. Attempt to account for the operator's whereabouts between the time of the accident and time of arrest. This can best be done through the statements of witnesses and the operator. Inquire whether the operator has consumed any alcoholic beverages or drugs since the accident.
 - d. If the operator does not come forward or the investigating Officer has grounds to believe that the operator has left the scene, attempt to ascertain by investigation the probable location of the operator.

**IV. DWI/DWAI
DRUGS ARREST
PROCEDURES**

- A.** Upon determining probable cause to arrest a person for an alcohol/drug related traffic offense, the following procedures will be adhered to:
1. The arrested person should be handcuffed and searched in accordance with the procedures as set forth in *G.O. 505 – Prisoner Transport Procedures*.
 2. Notify the Communications Center that a DWI arrest has been made.
 3. When appropriate and authorized, conduct a search of the interior of vehicle for any evidence of the crime (e.g., search incident to arrest, vehicle inventory search, etc.) *See G.O. 712 – Warrantless Searches and Seizures*.
 4. Officers shall follow the procedures as set forth in *G.O. 620 – Vehicle Towing and Impound Procedures* if circumstances warrant the towing of the vehicle.
 - a. Do not allow the subject arrested for DWI to drive his/her vehicle under any circumstances.
 - b. Do not drive vehicles for persons arrested for DWI.
 5. Transport subject to the Public Safety Building and book the defendant in accordance with established Department procedures. *See G.O. 505 – Prisoner Transport Procedures; G.O. 510 Prisoner Booking and Detention Procedures*.
 6. Establish a BAC on the individual, if possible. If the level of impairment is inconsistent with the BAC, contact a DRE. If the individual refuses to consent to a breath test and the intoxication is not from alcohol, contact a DRE, otherwise proceed with a common law DWI Refusal.

**V. ARRESTING
OFFICER / DUTY
SUPERVISOR
RESPONSIBILITIES**

A. Arresting Officer or On-Duty Supervisor will:

1. On all DWI arrests send or cause to be sent a File 2a Integrated Justice Portal (EjusticeNY) to the Department of Motor Vehicles and also send or cause to be sent a Criminal Repository to the Division of Criminal Justice Services (DCJS) and National Crime Information Center (NCIC).

**VI. PROCESSING
DWI/DWAI DRUG
ARRESTS**

A. Warning to Defendant/ Refusal to Submit to a Chemical Test

1. The defendant should be asked to submit to a breath/blood test for alcohol/drugs. If the defendant should not agree or is uncertain, the proceeding must be followed.
2. The defendant **MUST** be warned by the arresting Officer in the following manner:

“You are under arrest for driving while intoxicated. 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 convicted of the charge for which you were arrested. If you refuse to submit to a chemical test, or any portion thereof, your refusal can be introduced into evidence against you at any trial, proceeding, or hearing resulting from this arrest. Will you submit to a chemical test of your (breath, blood, urine) for (alcohol and/or drugs)?”
3. In the event of a refusal by the defendant to submit to a chemical test, the arresting Officer must make out a **Report of Refusal to Submit to a Chemical Test (DMV-AA-134)** in quadruplicate, two copies for the police file and two copies for court. This report must denote the exact words used by the defendant in refusing to submit to the test. The report should also note that the defendant was requested and refused several times.

**VI. PROCESSING
DWI/DWAI DRUG
ARRESTS (CONT.)**

4. When a defendant refuses the test by feigning blowing into the mouthpiece, that particular mouthpiece must be retained by the operator as evidence after inspection determines that the air passage is unrestricted. The officer will place the mouthpiece into the property/evidence system. *See G.O. 905 – Property and Evidence Management.*
5. When a defendant refuses to submit to a chemical test, the Datamaster operator must enter into the Datamaster the refusal of the defendant.

B. Datamaster Test

1. The Datamaster test should be administered within **two (2) hours** of the arrest. However, the test can be administered more than two hours after the arrest **only** if the defendant consents to the test. The steps as listed on the Datamaster operational checklist will be followed. The information requested will be completed by the Datamaster operator. Any certified operator can administer the test.
2. Upon completion of the test, the original Datamaster operational checklist will be given to the arresting Officer. This checklist will accompany the arrest record of the defendant.
3. The copy of the Certificate of Calibration of the Datamaster must be a Certified Copy, available for court purposes.
4. The Chief of Police or his designee will provide and keep a list of all Officers designated and authorized to sign the BAC Datamaster State of New York Evidence Ticket.

C. Blood Tests

1. Section 1194 (2) of the NYS V&T law provides that while the breath, blood, urine, and saliva tests are made either by or at the direction of a police officer, the blood test is made only at the Officer's discretion.
 - a. If a DWI arrest is to be made following a motor vehicle accident and the operator has been taken to the hospital for his/her injuries; the Officer shall notify the duty Supervisor of same and then proceed to the hospital. The Officer shall then formally place the operator under arrest for DWI and ask him/her to submit to a blood test. If the operator refuses or is uncertain read him/her the warnings and determine whether they will submit to a blood test. The blood test should be administered within **two (2) hours** of the arrest. However, the test can be administered more than two hours after the arrest **only** if the defendant consents to the test. It should also be noted that current law does allow a test result obtained from an unconscious defendant in Vehicle and Traffic Law cases.

**VI. PROCESSING
DWI/DWAI DRUG
ARRESTS (CONT.)**

- b. If the operator agrees to the blood test, blood samples shall be taken within the two (2) hour limit and in accordance with NYS V&T Law §1194 (4)(a)(1). The following persons are allowed to draw blood samples:
1. Physician;
 2. Registered Professional Nurse;
 3. Registered Physician Assistant;
 4. A medical laboratory technician or medical technologist as classified by civil service; or
 5. A phlebotomist or an emergency medical technician who is certified by the Department of Health.
- Note:** Officers shall document the name and title of the person drawing the blood in their report. If the blood is drawn under the supervision of a physician, as in §VI (C)(1)(b)(4-5) above, the physician's name must be documented in the Officer's incident report.
- c. The blood sample shall be taken in the presence of the arresting Officer and shall be obtained in a Blood Specimen container supplied by the Geneva Police Department adhering to the instructions described by the NMS Lab Submission Form. After the blood samples are drawn, the arresting Officer will complete the NMS Analysis Requisition and Chain of Custody form (1 copy to be secured in the sample box, 1 copy to the LT/DB) and follow the instructions listed. A copy of the Place the Styrofoam or plastic bag inside the cardboard (mailer) box, seal the box with the enclosed seal. Create a BEAST Evidence label and affix the label to the outside of the box, then place blood sample box in Intake Refrigerator. *See G.O. 905 – Property and Evidence Management.* The aforementioned procedure shall be documented in the arresting Officer's incident report.
- d. If the violator refuses to submit to a blood test, and the accident resulted in the death or serious physical injury of another person, the provisions allowing for application to a court for an order to compel a blood test, as set forth in § 1194 (3) must be followed carefully.

D. Drug Tests

1. In the case of an arrest for DWI, supported by all necessary probable cause, and a subsequent Datamaster reading shows a low blood alcohol content which is inconsistent with the defendant's behavior, it should be investigated that the defendant's intoxication may be due to the defendant's use of drugs.
2. Should the above be the case, and the Officer has reason to believe that the suspect is under the influence of a drug (e.g., admissions of drug use by the defendant, the presence of illegal drugs or drug paraphernalia, and/or common packaging items for illegal drugs), the Officer should ask the defendant to submit to a blood test or a DRE Exam (Contact a DRE for guidance).

Note: If a particular drug is suspected, such drug type should be clearly noted on the NMS Analysis Requisition & Chain of Custody Form.

3. A refusal to take a second chemical test should be treated as a refusal and required paperwork should be completed for such.

**VI. PROCESSING
DWI/DWAI DRUG
ARRESTS (CONT.)**

E. Required Reports and Disposition of Defendant

1. The arresting Officer will complete all required paperwork for the arrest including but not limited to:
 - a. Incident Report;
 - b. Arrest Report;
 - c. NYS Bill of Particulars/Supporting Deposition (DCJS-3204);
 - d. DWI Investigation Note Card;
 - e. Refusal to Submit to a Chemical Test, if required;
 - f. Uniform Traffic Tickets;
 - g. Felony Information, if required;
 - h. DRE Paperwork

2. Upon completion of all necessary paperwork, the defendant will be released or held for arraignment in accordance with the provisions as set forth in ***G.O. 501 – Appearance Tickets and Pre-Arraignment Bail.***

Approved By

MICHAEL J. PASSALACQUA
CHIEF OF POLICE