



<b>TRAFFIC ENFORCEMENT</b>	<b><u>Related Policies:</u></b> Fair and Impartial Policing, Body Worn Cameras
<i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes: 23 V.S.A §§ 674, 1133 (a,b), 1091 (a,b,c), 1094(a,b), 1128 (a,b,c), 1201 (a)(2), 1261.	
Date Adopted: March 8, 2021	Review Date:

**POLICY:**

The BPD shall enforce all traffic laws within the community without prejudice and/or bias. The detection of traffic law violations may be: reactive by an officer on patrol, proactive/preventive in response to community concerns, or may be an effort to reduce the number of traffic crashes in a specifically identified area. Enforcement of the traffic laws of Vermont is a responsibility of every officer and supervisor. Nothing in this policy shall be construed to limit an officer or supervisor exercising his or her discretion in the issuance of a written warning in lieu of a Vermont Civil Violation complaint, where appropriate. All officers will treat every citizen with dignity and respect in furtherance of building and maintaining good relations with the public.

Data for every vehicle stop shall be documented by completion of the written forms made available to the Officer. Additionally, all vehicle stops shall be recorded on the dispatcher’s radio log.

Data collected from vehicle stops shall be audited quarterly by BPD administrative staff in preparation for annual upload by State of Vermont Department of Public Safety (DPS). The Chief of Police shall obtain, to the extent available, reports of all vehicle stops by BPD Officers and Supervisors for review and analysis, and share the results regularly with the Town Manager’s Office. BPD vehicle stop data shall be published at least annually on the Town and BPD websites.

The BPD shall employ numerous methods of traffic law enforcement in order to detect violations and maximize the safety of the traveling public within the Town of Bennington, Village of Old Bennington, and Village of North Bennington. BPD officers may enforce traffic laws within the entire State of Vermont. The BPD requires that all officers remain acutely aware of the inherent danger of motor vehicle stops and will take the utmost care to provide for the continued safety of themselves and the community.

The BPD will conscientiously enforce all "Operating Vehicle under the Influence" (DUI) laws. All officers have the responsibility to be familiar with and remain up to date on the latest applicable court rulings concerning DUI. In order to ensure the safety of the community, the BPD takes DUI operation with the highest level of seriousness.

The BPD officers shall check the driver's license status of all persons suspected of violating a motor vehicle law and take appropriate action upon identifying an operator with a suspended license.

This Policy is adopted by the Select Board of the Town of Bennington, Vermont, this 8th day of March, 2021 and is effective until amended or repealed.

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Jeannie Jenkins, Chairperson

## **PROCEDURES:**

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**PURPOSE:** To establish procedures for traffic law enforcement through proactive and preventive enforcement and reactive patrols by outlining acceptable methods and establishing guidelines for proper detection, investigation, processing and reporting of traffic law violations, reducing vehicle crashes, and assisting the Bennington Police Department (BPD) in identifying criminal activity. While utilizing these methods, officers will strive to enhance the relationship between the community and the Police Department.

## **1. TRAFFIC ENFORCEMENT**

### **I. TYPES OF ENFORCEMENT ACTION**

Enforcing traffic law violations will result in one of the following actions by the officer. These enforcement actions may be used with discretion by the officer depending on the circumstances and the severity of the offense.

- A. **Warnings** – A written warning may be issued to the violator of a minor traffic law violation, a unique or unknown law to the violator or for minor equipment violations. The officer should take

into account the time of day, the vehicular traffic, weather conditions, and the pedestrian traffic when deciding to give a warning or VCVC. All data will be entered and completed on the face of the written warning.

- B. **Written Warning For Equipment Repair** – An equipment repair order may be issued for defective equipment violations. These violations may include, but are not limited to, headlights not working, taillights not working, defective muffler or a cracked windshield. If the repair order is not returned to the officer in five days, the officer may issue a VCVC. All data will be entered and completed on the face of the written warning.
  
- C. **Vermont Civil Violation Complaint (VCVC)** – A VCVC may be issued to an operator who is in violation of any provision of Title 23 VSA or rule adopted under Title 23. A VCVC should be issued to a violator who is jeopardizing the safe and efficient flow of vehicular and pedestrian traffic. These violations may include hazardous moving violations, or operating unsafe and improperly equipped vehicles. VCVCs are civil complaints and recipients are not subject to arrest. When issuing a VCVC, officers must comply with the Soldiers and Sailors Relief Act. Notes will be completed and the issuing officer will enter all required data on the department copy of the VCVC.
  
- D. **Vermont Criminal Citation (VCC)** – An operator who is in violation of any of the provisions of Title 23 VSA listed under subsection E of this chapter shall be issued a VCC to appear in Bennington Superior Court-Criminal Division at a specified time and date. The officer shall read the VCC to the operator and ask them to sign and date it. If the operator refuses to sign, the officer will write, “refused to sign” in the space provided for the operator’s signature and give a copy to the operator. If the operator falls into one of the Vermont Rules of Criminal Procedure (Rule 3) criteria for physical arrest, then the operator shall be taken into custody.
  
- E. **Physical Arrest** – A physical arrest of an operator will be made for a misdemeanor criminal violation of Title 23 VSA if the operator falls into one of the Vermont Rules of Criminal Procedures (Rule 3) criteria for physical arrest. The operator will be physically arrested for any felony criminal violation of Title 23 VSA. An operator of a motor vehicle may be given a VCC or be physically

arrested in accordance with Rule 3 for the following violations of Title 23:

1. Attempting to elude  
Title 23 VSA 1133(a/b).
2. Careless & Negligent Driving  
Title 23 VSA 1091(a/b).
3. Driving to Endanger  
Title 23 VSA 1091(b).
4. Careless & Negligent Driving (Serious Bodily Injury Occurring)  
Felony – Title 23 VSA 1091(c).
5. Driving While License Suspended (Criminal) –  
Title 23 VSA 674.
6. Driving While Intoxicated (.02% persons under 21 years of age)  
Title 23 VSA 1216.
7. Driving While Intoxicated (0.4% commercial vehicle operator)  
Title 23 VSA 1218
8. Driving While Intoxicated (alcohol or drugs or both)  
Title 23 VSA 1201(a)(2).
9. Leaving the Scene of an Accident  
Title 23 VSA 1128(a).
10. Leaving the Scene of an Accident (Serious Bodily Injury)  
Title 23 VSA 1128(b).
11. Leaving the Scene of an Accident (Death Resulting)  
Title 23 VSA 1128(c).
12. Operating Without Owner's Consent  
Title 23 VSA 1094(a/b).

## **II. OTHER CONSIDERATIONS**

While BPD Officers will enforce all State and Local traffic laws equally, without regard to the person's actual or perceived gender, age, race, color, religion, national origin, sexual orientation or socio-economic status. The following categories may require some special considerations.

- A. **Nonresidents of Bennington** – Nonresidents will be treated in the same manner as residents. The type of action taken in each case will be at the officers discretion.
- B. **Juveniles** – Juveniles will be treated in the same manner as adult offenders. If the juvenile is to be physically arrested, then the officer will follow the procedures set forth by Vermont Law. (33 VSA 510).
- C. **Elected or Appointed Government Officials** – Government officials will be treated in the same manner as any other traffic violator. Although not exempt from civil traffic penalties, legislators may not be arrested or imprisoned during their necessary attendance at, and in going to or returning from, the general assembly, except that they may be arrested for treason, a felony or breach of the peace.
- D. **Foreign Diplomats/Consular Officials** – Officials, their family, or servants may be issued a VCVC, but may not be physically arrested as per Federal Law in the Diplomatic Relations Act of 1978. The officer may detain the person until their diplomatic immunity is established. The officer should contact the State Department to establish the diplomat's immunity and to inform them of the violation that has been committed.
- E. **Military Personnel** – Military personnel will be treated in the same manner as any other violator. Special attention must be paid to the Soldiers and Sailors Relief Act of 1940 if the operator is on or is going into active military duty.

### III. INFORMING THE OPERATOR OF COURT APPEARANCE/FINE

- A. **Court Appearance**
  - 1. **Physical Arrest/Lodging** – A person who has been physically arrested and lodged will be informed of the charge(s) that they are being incarcerated for, and the day and approximate time that they will be arraigned. The operator will also be advised of the bail that has been set forth by the court as soon as possible.
  - 2. **Citation** – If an operator is given a citation to appear in Vermont Superior Court, Criminal Division, they must be

read the entire Vermont Criminal Citation. The Citation lists reasons they are being brought to court; the date, time and place of the appearance as well as the criminal charge. The Citation also states that appearance is mandatory and that if the operator does not appear an arrest warrant may be issued. The officer should also explain the information sheet that is given with the Citation. If the operator is a juvenile, age 18, but not yet 19 (19, July 21) but not yet 20, the officer will petition the Family Court for charges to be brought forward against the juvenile. (Exception Big 12 Crimes).

3. Vermont Civil Violation Complaint – The officer shall inform the operator that they may appear in Vermont Traffic court if they desire to do so by checking the appropriate box on the reverse side of the VCVC and sending it to the Vermont Judicial Bureau. The Bureau will then assign a court date for the case to be heard.

#### **B. Fines**

1. Physical Arrest – Advise the operator that the fine will be set by the judge when a plea of guilty or a determination of guilt has been made by the court.
2. Citation – Follows the same guideline as Physical Arrest.
3. Vermont Civil Violation Complaint – The officer may tell the violator the specific charge for which they are receiving the Traffic Complaint, the number of points and the fine as it is printed. The officer may then explain that if the violator does not wish to contest the Complaint, they may pay the fine, check the appropriate box on the back of the Complaint, or go on line to [www.vermontjudiciary.org](http://www.vermontjudiciary.org) and send it in to the Vermont Judicial Bureau within 21 days.

### **IV. UNIFORM TRAFFIC LAW ENFORCEMENT PROCEDURES**

- A. **Driving While Intoxicated/Under the Influence of Drugs** – Officers should detain all persons suspected of driving under the influence of alcohol or drugs for the purpose of obtaining an

evidentiary test. Once a person has been taken into custody for Driving While Intoxicated, a violation of Title 23 VSA 1201, the officer will follow the procedures and use the forms that have been set forth through the Vermont Criminal Justice Training Council and the State of Vermont for properly administering the evidentiary breath or blood test through either the DataMaster DMT, or a laboratory technician drawing the blood.

- B. **Speeding Violations** – Officers may determine the speed of a vehicle by pacing it, or using some type of speed measuring device (radar, laser, visual estimation). Officers shall enforce speeding violations by use of written warnings, or VCVCs.
- C. **Other Hazardous Moving Violations** – A hazardous moving violation shall mean violation of any provision of Title 23, while the motor vehicle is being operated on a public highway, over which the operator has control as to commission of the act. Officers may observe a hazardous moving violation. This violation may be enforced through the VCVC, a Criminal Citation, or a written warning. Any criminal offender shall be given a Criminal Citation or the person may be physically arrested if the person meets Rule 3 criteria or if a felony has been committed.
- D. **Equipment Violations** – Officers observing equipment violations should stop the vehicle and give a written warning or issue a VCVC. If a written warning is issued, the officer must tell the violator that they have 5 days to have the violation repaired, have the slip signed by a certified inspection station and returned to the officer. If the officer does not hear from the violator within 5 days, the officer may issue a VCVC to the violator.
- E. **Public Carriers/Commercial Vehicle Violations** – Officers trained in the detection of public carrier/commercial vehicle violations shall enforce such violations as they would any other violation. The officer may enforce these laws with written warnings, VCVCs or Criminal Citations. Any officer may enforce violations related to driving a commercial vehicle without a CDL or driving while intoxicated with a CDL endorsement.
- F. **Non-hazardous Violations** – Non-hazardous violations shall mean any violation of a provision of Title 23 pertaining to parked vehicles, equipment, size, weight, inspection or registration of the vehicle, or other similar violations deemed to be non-hazardous by



the officer. These violations will be enforced by the use of warnings or VCVCs.

- G. **Multiple Violations** – Officers may use their discretion when dealing with multiple violations. The officer may issue written warnings, VCVCs or Criminal Citations for any or all of the violations. If a criminal act has occurred, the officer may issue a Criminal Citation. If there are other violations that are observed, the officer may issue any of the above enforcement actions.
- H. **Off Road Vehicle Violations** – Off road vehicles include mini bikes, motorcycles, four-wheelers, three-wheelers, and snowmobiles. Any violation of Vermont law may be enforced through written warnings, VCVCs, or Criminal Citations.
- I. **New Enacted Laws and/or Regulations** – When a new law or traffic control device is put into effect, the officer should use their discretion for the first thirty (30) days and consider using written warnings when enforcing the law. Nothing in this policy shall prevent the officer from issuing a VCVC.
- J. **Seat Belt and Child Passenger Safety Laws** – The Bennington Police Department has a “zero tolerance” enforcement of Seat Belt and Child Passenger Safety Laws. Officers, while enforcing motor vehicle laws, shall check to see if seat belts and child restraints are being used. If a violation is noted, the officer shall enforce the law without exception.
  - 1. **Seat Belt Laws** – Seat Belt Laws are secondary in nature, which means that another violation must occur before the stop is made. The VCVC for the original violation must be issued before the \$25 progressive seat belt fine can be assessed.
  - 2. **Child Passenger Safety Laws** – These laws are primary in nature, which means that a violation of this section is a separate violation. A separate VCVC may be issued for this violation.

## V. OFFICER’S CONDUCT TOWARD TRAFFIC VIOLATORS

- A. Traffic law enforcement is one of many tasks performed by BPD officers. This type of enforcement is usually one of the first personal contacts that violators have with the police. For some

violators, it is a stressful experience. Officers should be aware of this and try to make each contact educational. The officer should perform their job in a professional and courteous manner and make a conscientious effort to present themselves, and the BPD in a favorable way. Once the violator has been stopped and the officer has approached the violator's vehicle, the officer/violator relations are activated. The officer will:

1. Present a professional image in dress, grooming, mannerisms, language, bearing and emotional stability.
2. Be certain of the observed traffic violation, without reservations.
3. Greet the violator with their title, name, and department. At some point in this introduction, the officer shall state the reason as to why they are stopping the violator.
4. Request the violator produce their license, registration and insurance form, unless there is a need for another type of identification.
5. Discuss the violation with the violator being sure not to berate, argue with, or verbally abuse them.
6. Be alert for signs of physical impairment, drug and/or alcohol use. If the officer observes any of the above, they will take appropriate action in either assisting the violator or enforcing the law.
7. Have the necessary forms and equipment in the cruiser for immediate use.
8. The necessary forms will be filled out completely and **legibly**. The officer will explain to the violator what they need to do in response to the action taken, whether it be paying a fine, appearing in court, or satisfying a written warning. The officer will also explain to the violator what effect the enforcement action will have on the operator's driving record.
9. Assist the violator in reentering the flow of traffic safely after the stop is completed, by allowing the violator to enter back into the public highway before you do.

## 2. TRAFFIC ENFORCEMENT METHODS – DETECTING VIOLATIONS

POLICY: The BPD shall employ numerous methods of traffic law enforcement in order to detect violations and maximize the safety of the traveling public within the Town of Bennington, Village of Old Bennington, and Village of North Bennington. BPD officers may enforce traffic laws within the entire State of Vermont.

### I. TRAFFIC LAW ENFORCEMENT PRACTICES

- A. **Visible Traffic Patrol** – Uniformed patrol officers will be involved in visible traffic patrol during the normal course of their patrol duties which includes observation and enforcement of traffic violations.
  - 1. Area Enforcement – involves traffic enforcement in an officer’s assigned patrol area for that shift.
  - 2. Special Enforcement – Involves traffic enforcement on particular streets in the Town or enforcement of particular violations.
  - 3. Directed Enforcement – Specifies traffic enforcement at a precise location for an explicit reason.
- B. **Stationary Observation** – Officers may use covert or overt observations in the enforcement of traffic law violations. Officers should be visible to the general public while they are filling out paperwork so that the public will be reminded and encouraged to obey all traffic laws. Officers should be encouraged to use overt observation rather than covert. The use of covert observation is generally less well accepted by the public. The use of covert observation is sometimes needed to enforce specific violations in specific areas.
- C. **Use of Marked/Unmarked Vehicles** – Uniformed patrol officers shall utilize marked and unmarked patrol vehicles when enforcing traffic law violations. The unmarked vehicle must be equipped with blue and white lights and a siren and be driven by a uniformed officer.
- D. **Use of Smart Cart** – At the direction of the supervisor, the Smart Cart will be set up in areas where speed may be a factor. The Cart will monitor the flow of traffic and record speeds of vehicles. The

Cart will be used as a tool to determine areas where speed may be a problem.

## II. SPEED ENFORCEMENT

The BPD utilizes speed measuring devices for several reasons, including high or potentially high crash locations when speed is a factor; in areas where speed limit violations are prevalent; in response to citizen complaints concerning speeding motorists; and to conduct traffic volume and speed percentile studies.

A. **Radar/Laser Units** – All radar and laser units used by the BPD will meet or exceed the specifications of the National Highway Traffic Safety Administration, and the International Association of Chiefs of Police.

1. All units shall comply with all local, State and Federal regulations.

B. **Operation of Radar/Laser Units** – The following guidelines are established for the use of radar and laser equipment, which will always be operated in compliance with the manufacturer's instructions.

1. All officers utilizing the units will be properly certified through the Vermont Criminal Justice Training Council.

2. The radar/laser unit must be properly installed and connected to the appropriate power supply, if required.

3. The effective range of the particular unit must be thoroughly understood by the operator, so visual observations can support the speed meter readings.

4. The operator must choose an appropriate location where speed has been identified as a factor through personal experience or through direction of a supervisor. The officer should choose a spot that is conducive to the effective and safe operation of speed measuring devices.

5. The radar or laser unit will be properly checked to ensure accuracy in checking speed. This check will be performed prior to use at a location. Most manufacturers recommend

specific methods of checking the unit. These methods will be followed without exception.

6. An operational check of the radar unit will be made at the beginning and end of each shift. The laser units will be checked at the beginning and end of each shift.
  7. If a radar or laser unit fails the operational check, the officer will immediately take it out of service and notify the vehicle maintenance officer and supervisor.
  8. Officers will not perform any repair work on the radar unit except for the replacement of the fuse with a same powered fuse or replacement of batteries.
- C. **Pacing** – When establishing a speed violation by “pacing”, the officer should follow the vehicle being paced for at least  $\frac{1}{4}$  of a mile while keeping a constant interval between them, in order to obtain a reading on the speedometer indicating that the vehicle being paced is exceeding the posted speed limit.
- D. **Enforcement of Speeding Laws** – To ensure consistent enforcement of speeding laws, the following general guidelines will apply:
1. 1 to 9 mph over posted speed – violators will generally be issued a written warning.
  2. 10+ mph over posted speed – violators will generally be issued a VCVC.
- E. **Elements for Court** – The officer must establish the time, place and location of the vehicle that was checked, the identity of the operator, the speed of the vehicle, and the visual and radar or laser check of the vehicle. The officer must also establish the following:
1. Their qualifications and training;
  2. that the radar or laser unit was operating and was operated properly;
  3. the radar or laser unit was tested for accuracy prior to and after use of the unit by the approved method;

4. that the posted speed limit signs in the area in which the vehicle was stopped were properly posted at the time of the infraction.

### **III. MAINTENANCE OF SPEED MEASURING EQUIPMENT**

- A. The vehicle maintenance officer is responsible for the periodic and required maintenance and repair that is needed to the radar and laser units. The vehicle maintenance officer and BPD Administrative Assistant will keep all records and certificates that are necessary for all repairs and calibrations that are done.
- B. Speed measuring devices will be checked and calibrated by officers at the beginning of each tour of duty. The officer should note any problems on a cruiser maintenance form.

### **3. STOPPING AND APPROACHING TRAFFIC VIOLATORS**

The BPD requires that all officers remain acutely aware of the inherent danger of motor vehicle stops and will take the utmost care to provide for the continued safety of themselves and the community.

#### **I. STOPPING AND APPROACHING TRAFFIC VIOLATORS**

Stopping and approaching traffic violators is one of the most dangerous functions that officers perform. The following procedure is intended to provide the officer, the violator, and the general public the maximum protection possible during a traffic stop. This procedure may vary according to road and traffic conditions, bearing in mind that the following procedures are for ideal conditions.

##### **A. Stopping a Vehicle**

1. A traffic stop begins when an officer observes a violation and positions their cruiser behind the traffic violator's vehicle.
2. The officer will notify dispatch of the license number and state of the vehicle that is going to be stopped, and the intended stop location. If there is no plate on the vehicle, the officer will give a thorough description of the vehicle.
3. The officer should be familiar with the patrol area and anticipate an appropriate location for the stop giving consideration to traffic flow, lighting, road design and

space. Officers should be mindful not to stop vehicles on curves or hills, or in intersections, private drives or parking lots with limited parking.

4. The officer should signal the violator with the emergency blue and white lights and horn or siren, if necessary.
5. The violator should be signaled to pull to the right side of the roadway close to the curb or on the shoulder, if the roadway has one.
6. Should the violator stop abruptly or in an unsafe area, the officer should advise the violator to move to an appropriate location. The officer should use the public address system to instruct the violator where to stop. If the violator is on a multi-lane roadway, the officer should assist the violator while making lane changes until the violator is on the right side of the road.
7. Once the violator has stopped in an appropriate location, the officer should position their vehicle behind the violator's vehicle. The cruiser should be positioned in either the left angle or offset position so that it offers the officer and violator maximum protection from oncoming traffic, and so that it affords the officer cover.
8. Prior to exiting the vehicle, the officer should observe the violator's vehicle, looking for suspicious activity. The officer should then get out of the cruiser after checking for approaching traffic, and continue to watch for suspicious actions by the violator or other occupants.
9. The officer shall approach the violator's vehicle from either the left or right side, using such factors as traffic flow, number of occupants, violation, etc. to determine the type of approach used. The officer must be alert for any unusual actions on the part of the occupants and should choose a path so that the doors cannot be used as a weapon against the officer.

10. If a second officer is sent to back up the initial officer, the second officer will exit their vehicle and cover the contact officer.
11. At night, the officer shall exercise extreme caution in selecting an appropriate place for the traffic stop, signaling the violator and positioning the police vehicle. After the stop, the headlights should be on low beam for the safety of oncoming traffic. Spotlights, take down lights, or any other available lights may be used for illuminating the inside of the violator's vehicle.

B. **Stopping an Approaching Vehicle** – If the officer observes a traffic violation occur in oncoming traffic, the officer will take the following actions:

1. Drive the cruiser to the extreme right hand side of the roadway.
2. As the violator approaches, signal the violator to stop. Do not leave the cruiser in an attempt to use hand signals as this places the officer in a hazardous position.
3. If the violator observes the officer's signal and stops, the officer will turn the cruiser around and position it appropriately to the rear of the violator's vehicle.
4. If the violator does not see the officer's signal to stop, the officer will turn the cruiser around and follow the vehicle, stopping and approaching in the aforementioned manner.

C. **Stopping a Following Vehicle** – If the officer observes a motor vehicle violation occur behind them, the following procedure will be used:

1. The officer will drive to the right side of the road.
2. As the violator approaches, the officer will remain in the cruiser and signal the operator to stop.
3. If the violator fails to stop, the officer will follow and stop the violator in the aforementioned manner.



## **II. STOPPING AND APPROACHING A KNOWN SUSPECT OR FELON**

- A. **Stopping a Known Suspect or Felon** – If an officer locates a vehicle perceived to be driven by a known or suspected felon, the officer will immediately notify the dispatcher of their location, the description of the vehicle (including plate number and state, make, model and color), and the number and description of the occupants. The officer will then keep the suspect vehicle in view, and request assistance from other patrol units.

While awaiting assistance, the officer will keep the dispatcher and other units informed of the location and direction of travel to facilitate their approach and minimize use of the emergency equipment. The suspect vehicle will not be stopped unless absolutely necessary until adequate support units are available and in position. The following procedures will be used in effecting the stop:

1. The officer will plan to stop the suspect vehicle in a location that will minimize danger to other citizens.
2. When conditions are appropriate, and support units available, the officer will move into position to stop the suspect vehicle.
3. The officer will signal the suspect vehicle to stop, utilizing all emergency equipment to warn other traffic.
4. When the suspect vehicle begins to stop, the officer will turn off their siren and actuate the public address system. When the suspect vehicle stops, the officer will notify dispatch of the location.
5. The officer will park the cruiser so that it provides maximum cover for them, and protects both the officer and suspect.

6. At night, all lights will be focused on the interior of the suspect vehicle, to the disadvantage of the violator.
7. The officer will exit the cruiser quickly, but remain behind the door post and within reach of the public address system microphone, if needed.
8. The officer initiating the stop (the lead officer) will direct each occupant, utilizing the public address system, if needed to remove themselves from the vehicle individually, according to specific directions, and into the appropriate search position, after which the approach may be made.
9. The back-up units will cover the lead officer and assist as directed to by the lead officer. Back up units shall stop and redirect vehicle and pedestrian traffic as necessary.
10. The lead officer will be the only one to give commands to the suspects to alleviate any confusion.

#### **4. DUI ENFORCEMENT**

The BPD will conscientiously enforce all “Operating Vehicle under the Influence” (DUI) laws. All officers have the responsibility to be familiar with and remain up to date on the latest applicable court rulings concerning DUI. In order to ensure the safety of the community, the BPD takes DUI operation with the highest level of seriousness.

##### **I. APPLICABLE STATUTES**

- A. Title 23 VSA 1201 Operating Vehicle Under the Influence of Intoxicating Liquor or Other Substance.
  1. A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway when:
    - a. the person’s alcohol concentration is 0.08 or more; or
    - b. a person is under the influence of intoxicating liquor; or

- c. a person is under the influence of any other drug or under the combined influence of alcohol and any other drug to the slightest degree, which renders the person incapable of driving safely.
  2. The fact that a person charged with a violation of this section is or had been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this section.
- B. Title 23 VSA 1216 Persons Under 21, Alcohol Concentration of 0.02 or More.
  1. A person under the age of 21 who operates, attempts to operate, or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation.
  2. If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a roadside test. Unless inconsistent with this section, the provisions of 1202, 1203 and 1203a of this Title shall apply to this section. A refusal to submit to an evidentiary test shall be considered a violation of this section.
- C. Title 23 VSA 1218 Commercial Motor Vehicles; 0.04.
  1. A person shall not operate, attempt to operate or be in actual physical control of a commercial vehicle when:
    - a. the person's alcohol concentration is 0.04 or more; or
    - b. the person is under the influence of intoxicating liquor; or
    - c. the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to the slightest degree that renders the person incapable of driving safely.
- D. Title 23 VSA 1219 Commercial Motor Vehicle; Detectable Amount, Out-Of-Service.

A person who is operating, attempting to operate or in actual physical control of a commercial motor vehicle with any measurable or detectable amount of alcohol in their system shall immediately be placed out-of-service for 24 hours by an enforcement officer. A law enforcement officer who has reasonable grounds to believe a person has a measurable or detectable amount of alcohol in their system on the basis of the person's general appearance, conduct or other substantiating evidence, may request the person submit to a test, which may be administered with a preliminary screening device.

The law enforcement officer shall inform the person at the time the test is requested that refusal to submit will result in their disqualification from driving a commercial motor vehicle as provided in Section 4116 of Title 23. If the person refuses to submit to the test, the person shall immediately be placed out of service for 24 hours and shall be disqualified from driving a commercial motor vehicle as provided in Section 4116 of Title 23.

## **II. TRAINING TITLE 23, VSA 1203 (S-7)**

- A. All officers processing an operator for DUI shall be certified by the Vermont Criminal Justice Training Council in DUI detection, field sobriety exercises, and the use of the Data Master breath testing machines.

## **III. EQUIPMENT**

- A. The Department will be equipped with:
  - 1. a BAC Data Master breath-testing machine.
  - 2. evidentiary and independent blood kits.
  - 3. preliminary breath-testing devices (Alco-sensors).

## **IV. OFFICER CONTACT**

- A. Officers should be familiar with the indicators of impaired operations that would give reason for the officer to believe that the operator is operating under the influence.
- B. Officers should continue, as long as safely possible, to observe operation to substantiate the officer's suspicion that the driver is operating under the influence. Motorists suspected of operating under the influence should be stopped as soon as safely practical.
- C. Officers shall not arrange for, nor give, a ride home in lieu of arrest for a DUI offense.

**V. SOBRIETY CHECKPOINTS**

- A. The checkpoint sites and times are to be pre-selected by the sobriety checkpoint supervisor. Supervisors will be certified in sobriety checkpoint operations. Consideration shall be given to:
  - 1. safety of the public and officers involved in the checkpoint;
  - 2. roadways that have a history of alcohol-related crashes;
  - 3. times when the presence of alcohol-impaired drivers is highest (times of day, days of week, etc.).
- B. Sites should have sufficient visibility from both directions and should have sufficient illumination. This should be accomplished through the use of:
  - 1. a minimum of three marked police cars displaying all emergency lights.
  - 2. warning devices such as flares or signs located a minimum of 1000 feet away (or as close to 1000 feet as possible) from the checkpoint in each direction.
- C. A minimum of five (5) officers will be used at a roadside sobriety checkpoint. All officers shall be in uniform, wearing a federally approved reflective vest and use flashlights for traffic control.
- D. Signs, as provided by the Department, should be posted a minimum of 1000 feet away from the checkpoint in the direction of operations. Checkpoint supervisor will follow the state guidelines for posting signs in different speed zones.

- E. Seven days prior to the actual date of sobriety checkpoints, the supervisor should attempt to make notification to the news media that sobriety checkpoints will be run in the Bennington area. The actual date of the intended checkpoint(s) or their actual location(s) should not be revealed.
- F. Vehicles shall be stopped in a pre-determined manner. The funnel method is the preferred type of checkpoint as the motorist is not requested to leave the highway unless there is a specific violation. It is preferable that all vehicles be stopped. If the checkpoint is located at a site with a high volume of traffic and congestion may occur if every vehicle were stopped, the supervisor shall pre-determine a uniform manner of selecting vehicles to stop, such as every second or third vehicle. This method is not to be changed by those officers making actual stops.
- G. If there are no immediate evidence of impairment by drugs or alcohol, a sobriety checkpoint handout will be given to the operator and the officer will suggest to the driver that they read the handout at a later time.
- H. If backup of traffic appears which creates noticeable congestion, activities should be stopped and the congested vehicles waived through. As a guide, traffic should be waived through if it appears the rear-most vehicle will be delayed more than 2 or 3 minutes.
- I. Information used as the basis for the selection of specific checkpoint sites shall be recorded by the sobriety checkpoint supervisor and filed for use, should the checkpoint be challenged in court. A record of all checkpoint assignments will also be maintained and kept on file for six years.

## **VI. INVESTIGATORY QUESTIONS**

- A. Drivers should be identified and only those inquiries related to alcohol/drug consumption should be made as permitted by current law.

- B. When the incident involves a non-witnessed crash, the officer should ask the operator if they have consumed alcohol after the crash and how much.

## **VII. STANDARDIZED FIELD SOBRIETY EXERCISES (SFSE)**

- A. Operators suspected of being impaired may be asked to exit the vehicle for sobriety exercises. The operator should be asked if they have any physical problems that would prevent the taking of the test.
- B. The officer shall attempt to administer at least three standardized Field Sobriety Exercises which have a high validity in establishing probable cause for DUI. Additionally, exercises may be performed by ARIDE certified BPD officers. If the operator cannot perform the tests, or refuses to, the officer should note this in their report.
- C. A preliminary breath-testing device (Alco-sensor) may then be administered following the SFSE.
- D. The operator should be processed for DUI if the officer develops probable cause to believe that the driver had been operating while under the influence.

## **VIII. ARREST**

### Vermont Rules of Criminal Procedure

- A. Rule 3 (a) (5) allows an officer to arrest an operator for DUI without an arrest warrant if the officer has probable cause to believe that the operator has committed or is committing the crime of DUI. The arrestee may only be detained for the limited purpose of obtaining a sample of blood or breath.
- B. Persons arrested shall be handcuffed and properly secured in a police cruiser for transport to the Department or other agency to administer an evidentiary test. Whenever possible, police unit with a protective barrier will be used.
- C. Officers participating in DUI selective enforcement programs will utilize marked and unmarked, police vehicles.

## **IX. PASSENGERS**

- A. Passengers should be identified and reasonable attempts should be made to obtain a written statement from the passenger(s) using the standard Passenger Statement Form.
- B. Incapacitated passengers who are a danger to themselves or others should be taken into protective custody and handled in accordance with the provisions of Title 33 VSA 708, Section B through J. Incapacitated juvenile passengers shall be turned over to a parent or guardian, or custody maintained pursuant to Title 33 VSA 5510.
- C. Officers may arrange for transportation from the scene for any passengers who require it.

**X. SUSPECT VEHICLES**

- A. Vehicles stopped in the traveled portion of the roadway or in a location where the vehicle cannot be left safely should be moved in the following manner:
  - 1. Moved by a non-impaired passenger, with permission from the operator, to a legal parking area.
  - 2. Moved by an officer, with permission from the operator.
  - 3. Removed by a wrecker of the operator's choice at the operator's request or by the on-call wrecker service if the operator has no preference.
- B. If possible, vehicles left unattended at the scene will be secured.

**XI. PROCESSING**

- A. Persons taken into custody will be brought to the Bennington Police Department, or other agency, for the administration of an evidentiary breath test.
- B. A sample of blood will be requested when:
  - 1. breath-testing equipment is not reasonably available; or
  - 2. a person is unable to give a sufficient sample of breath for testing; or



3. there is reasonable grounds to believe that the person is under the influence of a drug other than alcohol; or
  4. the person is incapable of making a decision or unconscious, a search warrant will be obtained; or
  5. the person is the surviving operator of a motor vehicle involved in a fatal crash and is unable to provide a sample of breath; or
  6. the person is the operator of a motor vehicle involved in a crash resulting in serious bodily injuries and the officer has reasonable ground to believe that person has any amount of alcohol in their system or the person is unable to provide a sample of breath.
- C. A sample of blood will be drawn by a laboratory technician at the Southwestern Vermont Medical Center.
- D. Arrest and bail will be completed in accordance with normal department procedure.
- E. DUI processing forms provided by the State of Vermont will be used. Officers will select the appropriate forms for the person being processed:
1. DUI Processing Form – Infrared
  2. DUI Processing Form – Blood
- F. The forms will be used in the order and manner currently prescribed by the Bennington County State’s Attorney.

## **XII. RELEASE FROM CUSTODY**

- A. Continued custody or release on a citation will be dependent on the VRCP RULE 3C, which allows for continued custody of persons with a previous conviction of 23 VSA 1201. If the person is to be lodged, the appropriate section of the processing forms must be completed and the officer must arrange for an independent blood test if requested.
- B. If the person is released on a citation, the officer must inquire whether the person intends to seek an independent blood test. If

so, the officer shall provide the person with an independent blood kit and a list of local facilities that will perform the test.

- C. If, at the conclusion of processing, the officer determines the operator is incapacitated, custody shall be continued pursuant to Title 33 VSA 708, Section B through J. If the operator is impaired, but not incapacitated, the officer should make reasonable attempts to locate a responsible person to take charge of the operator.
- D. If the person is not impaired, they may be released into their own custody.
- E. Juveniles processed will be completed with a parent or guardian and then released to the parent or guardian.

### **XIII. PAPERWORK**

- A. On release from custody, the operator should be given the following that applies to them:
  - 1. Citation for appearance
  - 2. Breath test results
  - 3. Hospital list for independent (blood) tests
  - 4. Independent Test Kit (with all request forms attached)
  - 5. Intent to suspend (may be mailed)
  - 6. Copy of Affidavit (may be mailed)
- B. The DUI Affidavit and Intent to Suspend form will be completed within three (3) days so the appropriate mailings can be made.
- C. The remainder of the case should be completed as soon as possible. The case must be completed in time to be copied, assembled, and delivered to the Bennington County State's Attorney's Office ten (10) business days before the arraignment date.

**5. TRAFFIC ENFORCEMENT – *DRIVING WITH LICENSE SUSPENDED*  
[DLS]**

The BPD officers shall check the driver's license status of all persons suspected of violating a motor vehicle law, and take appropriate action upon identifying an operator with a suspended license.

**I. DRIVING WITH LICENSE SUSPENDED**

A. All traffic violators should have their license checked through the Department of Motor Vehicles computer. When an officer has identified that an operator has a suspended or revoked license, they will do the following:

1. Ascertain through the dispatcher whether the offense is civil or criminal.
  - a. Civil Suspension – The violator will be issued a VCVC and the schedule of fine will be explained. The operator will be told that this is a civil violation, but that they may request a hearing if desired. The issuing officer shall comply with the Soldiers and Sailors Relief Act when issuing any traffic ticket.
  - b. Criminal Suspension -
    - b-1. The violator will be given a Vermont Criminal Citation to appear in court. The operator will be told that this is a mandatory court appearance.
    - b-2. The violator may be physically arrested if they meet one of the Rule 3 criteria set forth in Vermont law.

- B. If the violator displays a Vermont Operator's License and their privilege to operate in Vermont is under suspension, the officer shall confiscate the license. The officer shall use their discretion regarding issuing a Vermont Traffic Complaint for failure to return license after suspension.
  
- C. If the violator displays an out of state license and their privilege to operate is suspended in their home state, the violator shall be issued a Vermont Traffic Complaint for Operating Without a License.

The policies and procedures outlined above are hereby adopted by the Chief of Police of the Town of Bennington, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2021 and is effective as of this date until amended or repealed.

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Paul J. Doucette, Chief of Police