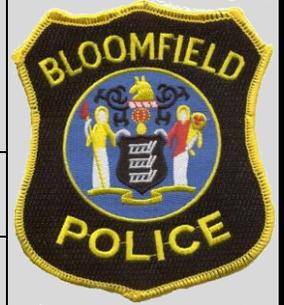


# BLOOMFIELD POLICE DEPARTMENT GENERAL ORDERS



VOLUME: 3

CHAPTER: 9

# OF PAGES: 7

**SUBJECT: DWI SOBRIETY CHECKPOINT**

**BY THE ORDER OF:**

**Director of Public Safety Samuel A. DeMaio**

**ACCREDITATION STANDARDS: N/A**

**Effective Date:**

**July 31, 2017**

**SUPERSEDES ORDER #:**

**PURPOSE** The purpose of this general order is to provide all members of the department with a basic understanding of their responsibilities as it relates to the responsibilities of operating a DWI sobriety checkpoint. All members of this department shall adhere to this general order at all times.

**POLICY** It is the policy of the Bloomfield Police Department to operate a safe and effective sobriety checkpoint with the purpose of detecting individuals operating motor vehicles under the influence of alcoholic beverages and or narcotics.

## PROCEDURES

### I. GENERAL

- A. Sobriety checkpoints serve a legitimate state interest by deterring persons from unlawfully operating motor vehicles while under the influence of intoxicating liquor or drugs. Sobriety checkpoint procedures will always be carried out with the utmost regard for the safety of motorists and the officers involved.
- B. Adherence to all constitutional requirements and guarantees is mandated. All sobriety checkpoints shall operate in conformance with the rulings in:
1. *Delaware v. Prouse*, 440 U.S. 648, 99 (S.Ct 1391 1979);
  2. *State v. Kirk 202*, N.J. Super. 28 (App. Div. 1985);
  3. *State v. Egan*, 213 N.J. Super. 133 (App. Div.) 1986;
  4. *State v. Kuhn*, 213, N.J. Super. 275 (1986);
  5. *State v. Mazurek*, 237 N.J. Super. 231 (app. Div. 1989);
  6. *State v. DeCamera*, 237 N.J. Super. 380 (App. Div. 1989);
  7. *State v. Barcia*, 235 N.J. Super. 311 (App. Div. 1989);
  8. *State v. Hester*, 245 N.J. Super. 75 (App. Div. 1990); and
  9. *State v. Badessa*, 373 N.J. Super. 84 (App. Div. 2004).
- C. All ancillary procedures resulting from a DWI sobriety checkpoint (e.g., warrantless searches, interrogations, Miranda, etc.) shall conform to contemporary criminal procedures and this department's general orders on *Search Procedures* and *Interview, Interrogation, Access to Counsel*.
- D. Only the Police Director can authorize a sobriety checkpoint:
1. The Police Director shall require an administrative plan for conducting the checkpoint. The administrative plan must contain the following requirements:
    - a. The location must be carefully targeted to a designated area at a specified time and place based on empirical data justifying the site selection for reasons of public safety and reasonably efficacious or productive to achieve law enforcement goals including, but not limited to:
      - 1) Number of collisions;
      - 2) Number of collisions with known with alcohol or drug involvement;
      - 3) Number of prior violations for DWI or other traffic violations;

- 4) Traffic volume;
  - 5) Motorist and pedestrian safety. (NOTE: avoid roadways with limited sight distances, no shoulders, poor lighting, etc.)
- b. The checkpoint must be the least intrusive as possible under the circumstances.
  - c. Marked police vehicles will be used with the emphasis on safety and visibility. Overhead lights will be activated on at least one marked radio car while the checkpoint is in operation.
  - d. There must be neutral and predetermined limitations on the conduct of the officers participating in the checkpoint. Discretion must be minimized by directing officers to stop vehicles at predetermined intervals (e.g., every vehicle, every 5<sup>th</sup> vehicle, 10<sup>th</sup> vehicle, 15<sup>th</sup> vehicle, etc.) and vehicles having observable violations.
  - e. There must be an adequate number of officers assigned to the checkpoint to minimize delays to the public. The plan must stipulate the number of officers required.
    - 1) No less than five regular officers and one supervisor will be assigned to each DWI checkpoint.
    - 2) At least one certified ALCOTEST operator will be either assigned or on duty during each checkpoint.
  - f. There must be a predetermined, safe and convenient 'pull over' or parking area for engaging motorists with potential violations.
  - g. Each officer participating in the checkpoint must be provided with a copy of, or instructed in the contents of, the required procedures set forth in the plan.
    - 1) Prior to each checkpoint all officers will be briefed on their assignments and responsibilities while at the checkpoint.
    - 2) All officers are responsible for reviewing and adhering to the procedures outlined in this general order.
  - h. To avoid frightening the public, adequate on-the-scene warnings must be given (e.g., large obvious signage, flashing lights, marked police vehicles, reflectorized equipment, etc.).
  - i. Carefully planned and predetermined procedures must be in place for operations that will involve moving the checkpoint from one location to another.
  - j. Sobriety checkpoints will not be established and will be discontinued if inclement weather prevents the safe operation of the checkpoint, as determined by the on-scene supervisor.

2. The Director of Public Safety must approve the administrative plan. The supervisor in charge of the DWI program shall provide a copy of the approved plan to the Essex County Prosecutor's Office at least 72 hours prior to the implementation of the checkpoint.
- E. Advanced notice procedures:
1. Although not required, the date and general time of the sobriety checkpoint can be advertised in the media or on the township's website prior to the operation. Such advanced notice can serve as a deterrent to DWI offenders and to advise the general public of the operation.
  2. The administrative plan should specify such advanced notice requirements, when applicable.
  3. Nothing in this section shall preclude this department from distributing informational drunk driving literature at any time to the public.
- F. On site checkpoint procedures:
1. The checkpoint supervisor is responsible for ensuring that all Constitutional requirements are met.
  2. The checkpoint supervisor must ensure that advanced warning signs are in place prior to beginning operations so that motorists clearly understand what is expected of them.
    - a. A '*Bloomfield Police Department DWI Checkpoint – No turns*' sign shall be placed in advance of the first location the traffic is to be stopped to warn drivers to slow down.
    - b. Road flares and traffic cones will be placed on the roadway so as to allow safe stopping (flare usage will be kept to a minimal so as not to cut down on the motorist's visibility).
  3. Officers must wear reflectorized vests. Reflectorized signs provided will be placed at all checkpoints. Flares and cones will also be used. Officers will make every effort to provide for the safety of the motorist and themselves.
  4. The checkpoint supervisor should assign an officer with a marked vehicle as a 'chase unit' to stop vehicles that appear to purposely avoid the checkpoint. This 'chase unit':
    - a. Will stop any vehicle that fails to pull into the checking area after being instructed to do so, and any vehicle that attempts to leave the checking area prior to be instructed to do so;
    - b. Will proceed after and stop any vehicle that officers believe are intentionally attempting to avoid the checkpoint;
    - c. Will proceed after and stop any vehicle that officers believe is being operated in such a way as to pose a threat to the safe operation of the checkpoint and/or motoring public.

- d. If it becomes necessary to pursue a vehicle, all such pursuits must comply with this department's general order on *Pursuits and Forcible Stopping Guidelines*.
5. All traffic as defined in the administrative plan approaching the checkpoint will be stopped. Traffic backups will be continuously monitored for safety. If the traffic backup reaches the maximum safe distance, cars in the line will be waved through the checkpoint to improve the flow of traffic. If the traffic backup will create an unreasonable delay, the line will also be waved through.
6. All motorists will be treated in a courteous, uniform and non-discriminating manner. The officer will approach each motorist and state "*Good evening, this is a DWI checkpoint; how are you?*" This should be done in a pleasant non-threatening way.
7. During the brief stop the officer will look for articulable facts, such as an odor of alcoholic beverage, slurred speech, the general appearance and/ or behavior normally associated with the DWI violator. A combination of these factors may give sufficient probable cause to believe the person is driving while intoxicated or under the influence of drugs.
8. If there is no immediate evidence of intoxication, or other apparent violation, the motorist will be permitted to continue on his/her way.
9. If probable cause exists that a motorist is operating under the influence or that there is another motor vehicle violation, the observing officer shall:
  - a. Cause the vehicle to be moved out of line to the designated safe area for secondary screening.
  - b. Ask for and take the operator's license, registration certificate, and proof of liability insurance.
  - c. Conduct psychophysical coordination tests to determine sobriety and if sufficient probable cause of intoxication is discovered the driver will be arrested and processed in accordance with this department's general order on *Arrest and Transportation*.
10. If a motorist avoids the checkpoint by making an apparent evasive maneuver even if the evasive action is a legal turn, the officer may stop that particular vehicle or request the 'chase unit' to stop the vehicle. However, officers should carefully observe such vehicle to determine if it is being operated competently.
11. The checkpoint supervisor shall ensure that the registration number of each vehicle sent into the checking area will be logged on a master log sheet. The log will contain information of the vehicle's registration number, driver's race, gender, number of occupants, reason the vehicle was sent into the checking area and any comments the supervisor deems necessary to show why a vehicle was directed into the checking area out of the established sequence.

G. Post checkpoint requirements:

1. The checkpoint supervisor shall submit a report, including the master log, to the Director of Public Safety after completing the checkpoint. The report shall minimally contain the following information:
  - a. The date, times and location of the checkpoint;
  - b. The names of the personnel participating in the checkpoint;
  - c. The number of vehicles passing through the checkpoint;
  - d. The license plate numbers of the vehicles passing through the checkpoint;
  - e. The number of vehicles stopped at the checkpoint;
  - f. The number of arrests made for DWI;
  - g. The number of arrests made for other violations/warrants, etc.;
  - h. The number of summonses issued;
  - i. Any problems encountered during the checkpoint;
  - j. Recommendations for future checkpoints.

H. Supplemental considerations:

1. A Florida attorney recently has advocated a procedure for motorists in various states to attempt to thwart sobriety checkpoints.
  - a. The procedure involves placing the driver's license, vehicle registration and insurance card in a clear plastic folder, which is then either hung outside the driver's side closed window or simply held against the inside of the closed window for inspection by police at the checkpoint stop.
  - b. Drivers have been instructed to keep the window closed and have no interaction with the police.
2. New Jersey appellate court authority has recognized that permitting motorists to choose whether they desire to cooperate with a sobriety checkpoint will reduce its effectiveness, detract from its deterrent effect and, on occasion, create safety hazards. The very nature of these checkpoints involves not only review of driver and vehicle documents, but observations for signs of driver impairment. By having the driver roll down his/her window, the police officer can determine whether evidence of impairment (e.g., the smell of an alcoholic beverage, a driver's bloodshot eyes, an open container of alcohol, etc.) is present.

3. If an officer encounters a driver who uses the Florida defense tactic, the officer should request that the driver roll down his/her window. If the driver does not cooperate, the officer should direct the vehicle to the designated secondary assessment area of the DWI checkpoint for monitoring of signs of impairment. The driver should again be asked to roll down the window. If the driver still refuses to do so, the officer should advise the driver that he/she will be arrested and charged with *Obstructing the Administration of Law* (N.J.S.A. 2C: 29-1a). If, after a number of attempts by the officer to secure compliance, the driver remains uncooperative, the officer may attempt forcible removal and arrest of the driver.