

BETHLEHEM POLICE DEPARTMENT GENERAL ORDERS

SUBJECT: MINORS TRANSPORTING ALCOHOL

CALEA STD. REF.

AMENDS/SUPERSEDES:

REVISED:

EFFECTIVE DATE: 9/2007

APPROVED:9/2007

NOTE: In any civil action against any individual, agency or governmental entity, including the State of New Hampshire, arising out of the conduct of a law enforcement officer having the powers of a peace officer, standards of conduct embodied in policies, procedures, rules, regulations codes of conduct, orders or other directives of a State, County or local law enforcement agency shall not be admissible to establish negligence when such standards of conduct are higher than the standard of care which would otherwise have been applicable under State law. (RSA. 516:36).

INDEX WORDS: Minors; alcohol

I. PURPOSE:

The purpose of this policy is to provide guidance to officers who encounter minors transporting alcohol in any conveyance, including a motor vehicle, boat, or aircraft.

II. DISCUSSION:

This policy sets forth the proper action to be taken by officers when they encounter minors in possession of alcohol, as required by the NH Supreme Court decision in *WELDY V. KINGSTON*, 128 NH 325.

III. DEFINITIONS:

As used in this policy, the term "minor" shall apply to any person under the age of 21, and who is legally prohibited from possessing alcoholic beverages under RSA 179:10 and from transporting alcoholic beverages in a motor vehicle under RSA 265:81.

IV IMPLEMENTATION:

- A. The case of *WELDY V. KINGSTON*, supra, states that when police officers encounter minors transporting alcohol in a motor vehicle, they have a common law duty to take the minors into custody, seize their vehicle and the alcoholic beverages, and notify the parents of the minors.
- B. The Supreme Court also held that under RSA 180:2 in the New Hampshire Liquor Laws, when an officer discovers any person in the act of transporting intoxicating liquor in violation of any law of the state, it shall be the officer's duty to seize all intoxicating liquors, take possession of any vehicle engaged in such illegal transportation, and the officer **SHALL** arrest any person or persons in charge of

the vehicle. This statute further provides that in accordance with RSA 617, the police may take further civil action for the forfeiture of the vehicle.

V. CUSTODIAL PROCEDURE:

Whenever any sworn personnel encounter a minor illegally transporting intoxicating liquor or alcoholic beverages in any motor vehicle or boat, they shall:

- A. Take the minor and any underage companions riding with the minor in the vehicle or boat into custody. Any minor who is in possession of the alcohol, if age 18 or over, shall be charged with a violation of RSA 179:10.
 1. Any minor who is in possession of the alcohol but who is less than 18 years of age, since illegal possession is a violation rather than a misdemeanor, is considered to be a Child in Need of Supervision (CHINS), and shall be taken into temporary custody as provided under RSA 169-D:8, and RSA 169-D:10. Since illegal possession of alcohol by a minor is a status offense, i. e., a type of act which would not be an offense if committed by an adult, the juvenile will be classified as a CHINS (Child In Need of Supervision) rather than as a delinquent, pursuant to RSA 169-D:2, IV-c, RSA 169-D:8 and RSA 169-D:10.
 2. These statutes permit a police officer to take into temporary custody a child who is found under conditions that would lead a reasonable person to believe that the child's health or welfare is in danger unless immediate action is taken, and permit the release of a child to a parent or guardian pending court appearance, or if a parent or guardian cannot be found, require that the juvenile court be notified and the child's release determined by the court. The court should be made aware of the risk that the juvenile will upon his release illegally acquire more alcoholic beverages. See WELDY v. KINGSTON
 3. Under RSA 626:1, II, a person is in possession of an item only if they knowingly procured or received the thing possessed and were aware of their control of it for a sufficient period to have been able to terminate their possession. To charge a minor with possession of alcohol, they must be in a position to exercise control over it, and be aware of its presence.
 4. If a juvenile is present in the vehicle but the circumstances are such that you feel some of the minors are in possession of alcohol and others are not, under RSA 169-B:9 and RSA 169-D:8, you are authorized to take custody of the minors who are riding in the vehicle but not actually in possession of the alcohol if you feel there is a potential threat to their health or welfare.
 5. If a minor over the age of 18 is present in the vehicle but the circumstances are such that you feel some of the minors are in possession of the alcohol

and this particular person is not, then that person has not committed a crime and cannot be charged under RSA 179:10, and is not a juvenile and therefore cannot be taken into custody under RSA 169-B:9. Determine if the minor is intoxicated or incapacitated. If so, take them into custody under RSA 172-B:3. If they are not intoxicated or incapacitated, you have no legal grounds to hold them.

VI. DISPOSITION OF CONVEYANCE:

1. If the driver of the vehicle is under the age of 21, take possession of the vehicle and order it towed under authority of RSA 262:31 which allows you to tow a vehicle if the owner or custodian is under arrest, RSA 262:40 concerning vehicles believed to have been used in connection with a criminal offense, and RSA 180:2. Inform the tow truck operator that they are not to release the vehicle without authorization from the police department.

VII. DISPOSITION OF ALCOHOL:

- A. Take possession of any alcoholic beverage found in the vehicle under authority of RSA 180:2 and as fruits of the crime of illegal possession. After taking possession of the vehicle, you should conduct an inventory search of the vehicle pursuant to the policies of this department and COLORADO V. BERTINE, 107 S.Ct. 738 (1987).

VIII. DISPOSITION OF MINORS:

- A. Transport all persons taken in custody to headquarters, and proceed further as follows:
 - a. Obtain the names of parents, guardians or custodians of each minor and make a reasonable effort to contact them at once. If a parent or guardian cannot be located, attempt to secure the name of some other relative and notify them.
 - b. In the case of juveniles, release them to the custody of the parent, guardian or custodian and notify them that a juvenile petition may be forthcoming at a future date.
 - c. In the case of minors who are not being treated as juveniles, contact the Bail Commissioner and recommend surety bail.
 - d. If a parent, guardian or custodian cannot be located for a minor being held in custody, and the minor is to be treated as a juvenile, contact the juvenile court justice for permission to hold them longer than 4 hours if necessary.
 - (1) As a CHINS, they cannot be kept in the same room or ward with a juvenile charged with delinquency or an adult charged with a

crime, and the court can only order them to be held in the equivalent of shelter care or released to a responsible adult.

- e. Subsequent to the filing of your report, the Records Clerk shall send a form letter to the owner of the vehicle taken into custody advising them of the possibility of forfeiture of the vehicle.

IX. RELEASE OF SEIZED CONVEYANCE:

- A. The vehicle may be released at any time upon payment of towing charges to an adult owner or a parent not involved in the offense, but shall only be released to a person involved in the offense the following day, and only with permission of the Prosecutor.

X. DISPOSITION OF EVIDENCE:

- A. Any intoxicating liquor seized which is used as evidence in court shall be disposed of only as ordered by the court. Intoxicating liquor not used as evidence in court shall be disposed of only in accordance with the policies of this department regarding the disposal of seized property.

XI. FORFEITURE OF CONVEYANCE:

- A. Procedures for the forfeiture of a vehicle shall only be undertaken on orders of the Chief, and only in case of a repeat offense involving the same vehicle.
- B. If it is determined that a vehicle should be forfeited, the Chief shall contact the City (Town) Attorney for legal advice on how to proceed.

XI. DRIVER LICENSE SUSPENSIONS:

- A. SEE REVISED RSA 265:81-A EFFECTIVE 1/1/2007
- B. At the option of the arresting officer, a letter may be sent to the Director of Motor Vehicles, setting forth the circumstances of the case, and requesting that the underage driver's license be suspended. A decision to request a license suspension shall not prohibit prosecution of the same person for Illegal Possession of Alcohol under RSA 179:10, or, if the containers of alcoholic beverage were open at the time, an Open Container Law violation if the facts warrant it.