

Policy #14

Subject: Minors Transporting and Unlawful Possession of Alcohol

Effective Date: February 2000

Reference: Standard Operating Procedures

Distribution: All Personnel

PURPOSE:

This standard operating procedure sets forth the proper action to be taken by members when they encounter *Minors in Possession of Alcohol*, as required by the New Hampshire Supreme Court decision in WELDY V. KINGSTON, 128 NH 325. The Littleton Police Department has always and will continue a zero tolerance policy.

A. DEFINITIONS:

As used in this standard operating procedure, 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.

B. SUPREME COURT DECISION:

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.

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.

C. PROCEDURE:

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

1. Take the minor and any underage companions riding in the vehicle or boat into custody. Any minor who is in possession of the alcohol, if age 16 or over, shall be charged as an adult with a violation of RSA 179:10.

Any minor who is in possession of the alcohol, but who is less than 16 years of age, 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. Illegal possession of alcohol by a minor is a status offense, i.e., a type of act that would not be an offense if committed by an adult.

The 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 release to a parent or guardian pending court appearance. If a parent or guardian cannot be found, they 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/her release, illegally acquire more alcoholic beverages. **See Weldy v. Kingston**

- a. 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.**
 - b. If a minor 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.
 - c. If a minor over the age of 18 is present, and not in possession of alcohol, but is intoxicated or incapacitated, take him or her into protective custody under RSA 172-B:3. If they are not intoxicated or incapacitated, you have no legal grounds to hold them.
2. 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.
 3. 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. If the vehicle is in a mobile condition, the scope of your search is governed by U.S. v. Ross, 456 US 798 (1982), and may include any location in the interior of the vehicle where alcoholic beverages may be found, including the entire passenger compartment and the trunk.

Search of only the passenger compartment may also be justified as incident to a valid arrest under CHIMEL V. CALIFORNIA, 395 US 752 (1969), and search of the entire vehicle and any closed containers therein as an inventory search under COLORADO V. BERTINE, 107 S.Ct. 738 (1987) under the policies of this department which govern inventory searches.

4. Transport all persons taken in custody to headquarters, and proceed further s 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 minors under the age of 16, 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 16 years of age and over, who are being treated as adults, contact the Bail Commissioner and recommend surety bail, or release them to a parent or guardian. If incarceration takes place at any stage of the proceeding, it can only be in a certified juvenile facility unless the minor is age 17 or older.
 - 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.

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 administrative office shall send a form letter to the owner of the vehicle taken into custody, advising them of the possibility of forfeiture of the vehicle.
- f. 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.
- g. 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.

D. FORFEITURE OF VEHICLES:

1. 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.
2. 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.

E. DRIVER LICENSE SUSPENSIONS:

1. RSA 265:81s, Illegal Transportation of Liquor by Minors, provides for a 60-day driver's license suspension.