



STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
PROFESSIONAL STANDARDS OF CONDUCT



DIRECTIVE TITLE: UNLAWFUL TRANS. / POSS. OF ALCOHOL **DIRECTIVE NUMBER:** GO.82.002
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RESCINDS/AMENDS: SOP #46

UNLAWFUL TRANSPORTATION
MINORS IN POSSESSION OF ALCOHOL

82-B.1.0 Discussion:

The purpose of this policy is to establish procedures and areas of responsibility for situations involving persons under the age of 21 who are illegally transporting intoxicating liquor in a motor vehicle, and/or are minors in Possession of Alcohol Beverages. (RSA 179:2; 179:10; 265:81)

82-B.1.1 Definitions:

- A. Minors and Young Adults: Persons under the age of 21 who cannot legally possess intoxicating liquor. (RSA 179:10)

82-B.1.2 Scope:

- A. This procedure covers the administrative and procedural duties of all Division members who come into contact with minors and young adults illegally transporting intoxicating liquor in a motor vehicle. (RSA 265:81; RSA 179:10)

82-B.1.3 Procedure:

- A. RSA 179:2 states:

"When...any police officer SHALL discover any person in the act of transporting...liquor in violation of this chapter, or any other law of this State...it SHALL be his duty to seize all... liquor found...he SHALL take possession of any vehicle engaged in such illegal transportation and SHALL arrest any person or persons in charge... . Such officer SHALL, at once proceed against the person or persons arrested...in any court having

competent jurisdiction, and the vehicle..., in accordance ...with RSA 617, MAY be adjudged forfeited... ."

The Supreme Court in *Weldy v. Town of Kingston* (decided July 17, 1986) held that the failure of...police officers to arrest was a breach of statutory and **common law duty** of due care. "**Due care mandates minors and young adults be detained and their parents notified.**"

- B. Whenever a Division member encountered any minor person in the act of illegally transporting intoxicating liquor, he/she shall:
1. Arrest the person(s) in charge for a violation of RSA 179:10.
 2. Seize all intoxicating liquor. (RSA 179:2; RSA 179:10)
 3. Shall take possession of the vehicle and cause it to be removed by a reputable towing agency. (RSA 179:2; 262:32 VI, 262:40)
 4. Shall make reasonable efforts to see that the parent(s) or guardian of the arrested person(s) are notified immediately, and in addition, in writing on part seven of DSSP 153 (see Appendix C).
 5. Shall notify the **owner of the vehicle** of the possibility of vehicle forfeiture in accordance with RSA 179:2 and RSA 617 on the form provided for that purpose.
- C. A person age 16 through 21 shall be treated as an adult for a violation of Title XIII (RSA 179:10) or of the motor vehicle law (265:81). RSA 169-B:32.
1. Persons under the age of 16 shall be treated juveniles pursuant to RSA 169-D:8; 169-D:2 IV, c; and 169-D:10.
 2. The arrested person may be released to a parent on a summons, if practical, or released on bail after reasonable efforts at parental notification.
 3. **No** minor or young adult SHALL be released, except to a parent or guardian, and if this is not practical, then a bail commissioner SHALL be notified, as he may set conditions for the release of the person. (RSA 597:2 and *Weldy v. Kingston*)
- D. The incident will be reported on appropriate forms.
1. Form DSSP 153 (Report of Unlawful Transportation of Alcoholic Beverage; See Appendices B & C) will be utilized when the only offenses are in fact Unlawful Transportation / Minor in Possession. If there are any additional criminal offenses, the appropriate forms will be utilized according to the Manual of Procedure for Reports.

- a. The DSSP 153 is a seven (7) part form. The copies will be routed as follows:
 - 1) Original - Headquarters
 - 2) Second Copy - Motor Vehicle within 10 days
 - 3) Third Copy - Troop File
 - 4) Fourth Copy - Trooper's Copy
 - 5) Fifth Copy - Troop File
 - 6) Sixth Copy - Parent / Guardian of Minor
 - 7) Seventh Copy - Owner of Vehicle

2. The form DSSP 138 (Notification-Minor in Possession; See Appendix A) shall be utilized in conjunction with the DSSP 153 form only when there is more than one (1) minor person who has been arrested from the same vehicle which has been stopped and a violation of RSA 179:10 is discovered.
 - a. DSSP 138 will also be used if any minor is arrested for the offense of illegal possession and there is no vehicle involved.
 - b. DSSP 138 **will not** be utilized if there is only one (1) minor in the vehicle which has been stopped.
 - c. The DSSP 138 is a five (5) part form. The copies will be routed as follows:
 - 1) Original - Headquarters
 - 2) First Copy - Headquarters - for UCR
 - 3) Second Copy - Troop File
 - 4) Third Copy - Trooper's File
 - 5) Fourth Copy - Parent / Guardian of Minor
 - a) The Parent / Guardian copy does not include a chain of custody section.

3. The forms will be type written and all copies are to be legible and free of strikeovers and spelling errors.
 4. A case number will be drawn from at the appropriate Troop Station. The letter "P" will follow the case number in the case book and on the report to denote the offenses of Unlawful Transportation/Minor in Possession cases.
- E. An area for storage of seized alcohol shall be maintained at each Troop Station. It is not necessary to store this evidence in the evidence room at the Troop Station.
1. The evidence may be stored at the Troop or at a secure location of the Troop Commander's choice and so noted on the form.
 2. Any liquor seized shall be forfeited and disposed of in accordance with RSA 179:3
 - a. Upon final adjudication, a Motion to Destroy Evidence which has been signed by the court justice, shall be submitted to the Troop Station. The Trooper shall then be responsible for the immediate destruction of the evidence.
- F. The vehicle may be released by the Troop Commander or his designee to an owner not involved in the incident at any time but shall not be made available to the arrested subject until the next day, unless such action would be unreasonable.
- G. The Investigative Service Section shall forward a list of vehicles seized pursuant to this directive to the Office of the Attorney General on a monthly basis.
- H. A preliminary decision whether forfeiture proceedings should be brought shall be made by the Troop Commander. If the preliminary decision is that forfeiture proceedings should be brought, then the car should not be released and the Attorney General's office notified within 7 days.

SOURCES: NH RSA 169-B:32, 169-D:2.IV.c, 169-D:8, 169-D:10, 179:2, 179:3, 179:10, 262:32.VI, 262:40, 265:81, 597:2 and 617.
DSSP forms 138 and 153
Weldy v. Town of Kingston

C.A.L.E.A. STANDARD(S):

**CHAPTER 82-B
UNLAWFUL TRANSPORTATION
MINORS IN POSSESSION OF ALCOHOL**

Appendix A

DSSP 138

REPORT OF MINOR POSSESSING ALCOHOL

DSSP 138 (Rev. 12/87) shall be used until revised to reflect correct RSA references. Until then, Division members shall ensure that references to RSA 175:8-a are changed to RSA 179:10 and that references to RSA 180:2 are deleted.

*The Original and 1st, 2nd & 3rd Copies of DSSP 138 are fully carboned. The 4th copy does not include the **POSSESSED PROPERTY** section and must have original signatures.*

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UNLAWFUL TRANSPORTATION
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Appendix B

DSSP 153

**REPORT OF UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGE
(Original and 1st, 2nd & 3rd Copies)**

DSSP 153 (3/88) shall be used until revised to reflect correct RSA references. Until then, Division members shall ensure that references to RSA 175:8-a are changed to RSA 179:10 on all parts of the form and that references to RSA 180:2 in parts 5, 6 & 7 are changed to RSA 179:2.

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Appendix C

DSSP 153

**REPORT OF UNLAWFUL TRANSPORTATION
OF ALCOHOLIC BEVERAGE
(Parts 5, 6 & 7)**

DSSP 153 (3/88) shall be used until revised to reflect correct RSA references. Until then, Division members shall ensure that references to RSA 175:8-a are changed to RSA 179:10 on all parts of the form and that references to RSA 180:2 in parts 5, 6 & 7 are changed to RSA 179:2.

*To utilize Parts 5, 6 & 7 of the DSSP 153 (3/88), the **NOTICE TO PARENT AND VEHICLE OWNER** section must be completed after the form is taken apart and separated from its carbons.*