5.1 TRAFFIC ENFORCEMENT

5.1.1 PURPOSE

This policy establishes the procedures for traffic law enforcement.

5.1.2 POLICY

Officers shall enforce traffic laws fairly and appropriately to reduce traffic violations and crime through officer presence, preventative patrol, and active criminal interdiction.

5.1.3 TRAFFIC ENFORCEMENT GOALS AND OBJECTIVES

The objective of traffic enforcement is the reduction of fatalities, personal injuries and property damage as a result of traffic accidents. To this end, the Department will collect and analyze traffic accident data in order to direct selective enforcement efforts to those areas or conditions that contribute to traffic accidents.

A. Focused enforcement activities are the primary responsibility of the Motorcycle Unit. However, all officers have secondary responsibility to ensure proper traffic enforcement occurs in all areas of the city.

5.1.4 TRAFFIC ENFORCEMENT ALTERNATIVES AND GUIDELINES

A. Traffic Enforcement Practice

Officers shall employ a variety of patrol and enforcement techniques which effectively address violations while minimizing interference with the safe and orderly movement of traffic.

1. Area patrol – moving traffic enforcement within the officer’s area of responsibility.

2. Directed patrol – for a specific location or intersection usually directed by a supervisor or commander.

3. Stationary observation, either covert or overt, may be used as a technique to make observations about the flow of traffic in a specific location.
4. Unmarked vehicle patrol- Unmarked police vehicles may be utilized for traffic stops when the vehicle is equipped with the appropriate emergency equipment for recognition by motorists.

B. Enforcement Alternatives

1. Officers are to use individual discretion, based on professional judgment, as to which form of law enforcement action will be taken when there is no motor vehicle accident involved.

2. Action will be appropriate for each violation of the law, and accomplished in a fair, impartial, courteous and business-like manner. The guidelines below may be used to assist in the decision-making:

   a. A verbal warning is appropriate when the violator commits a very minor violation that results in little or no potential danger to the public.
   b. A written warning is a proper alternative in response to a minor traffic violation, when court or adjudication is not necessary or warranted.
   c. At the time a motorist is issued an official citation, the officer shall provide information to the motorist relative to the specific charges, to include:

      1) Whether court appearance is mandatory;
      2) The time limit violator has to pay the fine or request a court date;
      3) Whether the motorist can enter a plea and pay by mail; and
      4) Other information that may be pertinent.

   d. Repair Citations

      1) Officers may issue “Seven Day Repair Summons” instead of official citations for all minor equipment violations.
      2) The issuing officer shall write on the face of the ticket or click the box on Digiticket “seven days to repair”, to be inspected at the LEC, 320 Kansas Ave, Suite 100, Topeka, KS  66603.
      3) The officer should verbally instruct the violator to correct the vehicle defect and to bring the vehicle and summons to the LEC within seven calendar days of the date the summons.
      4) The front desk officer shall be responsible for the inspection of the vehicle. The inspecting officer should sign and date the violator’s copy and record the ticket number, the person’s name, the date the person came in and name of officer doing the inspection on the log sheet.

   e. Voiding of Citations
1) Officers shall make any request to void a ticket through their Bureau Commander in writing.

   a) Written requests to void a citation shall include the reason for the request on the back of the ticket.
   b) The Bureau Commander shall void the ticket by placing “VOID” on the front of the ticket, signing and dating the back and forwarding it to Municipal Court.
   c) Decisions whether to void a citation should include the issuing officer.

C. Physical Arrest

1. According to KSA 22-2401, a law enforcement officer may arrest a person under any of the following circumstances:

   a. The officer has a warrant commanding that the person be arrested.
   b. The officer has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.
   c. The officer has probable cause to believe that the person is committing or has committed:

      (1) A felony; or
      (2) a misdemeanor, and the law enforcement officer has probable cause to believe that:

         (A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;
         (B) The person may cause injury to self or others or damage to property unless immediately arrested; or
         (C) The person has intentionally inflicted bodily harm to another person.

   (d) Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.

2. In addition, under TMC 2.40.260, a law enforcement officer may also arrest a person under the following circumstances:

   a. A warrant for the person's arrest has been issued by a municipal court in this state.
b. The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that the person has intentionally inflicted bodily harm to another person.

c. The law enforcement officer detained the person pursuant to TMC 2.110.250(c) or (d) and amendments thereto and:

   1) The person refuses to give a written promise to appear in court when served with a notice to appear;
   2) The person is unable to provide identification of self by presenting a valid driver’s license or other identification giving equivalent information to the law enforcement officer;
   3) The person is not a resident of the state of Kansas; or
   4) The law enforcement officer has probable cause to believe that the person may cause injury to self or others or may damage property unless immediately arrested.

d. A law enforcement officer may not arrest a person who is charged only with committing an ordinance traffic infraction or an ordinance cigarette or tobacco infraction unless the person charged has received service of a notice to appear and has failed to appear for the infraction.

D. Guidelines for Traffic Citations

The following guidelines may help officers decide whether or not a traffic citation(s) is warranted.

1. Vehicles

   a. Speeding or other moving violations: Should be clear evidence of probable cause and may depend on location and time of violation, e.g., in a congested area, a school zone during school hours, etc.;
   b. Other hazardous violations: Consider degree of hazard, time, place, previous accident history of location;
   c. Equipment violations: Consider issuance of a citation for any equipment defect which has the potential to cause an accident;
   d. Public carrier/commercial vehicle violations: State law requires many operators of commercial vehicles to possess a valid commercial driver’s license (CDL). Officers shall be familiar with the special restrictions and requirements for persons with CDLs. Except for the special requirements placed on commercial vehicle operators by law, they shall be treated the same as other highway users with regards to enforcement of traffic laws;
   e. Other non-hazardous violations: The decision to warn or cite a violator for a non-hazardous violation will ultimately rely on the officer's judgment based on the conditions and circumstances at the time of the violation;
f. Multiple violations: Officer’s discretion should be used in dealing with a multiple violation situation. The issuance of one (1) citation for the most serious violation and warnings for the other violations may serve the purposes of effective traffic enforcement. However, in some cases multiple citations may be warranted based on the judgment of the officer;

g. Newly enacted laws and/or regulations: Discretion may be used in the case of a new law which the motorist may not yet be familiar with. A period of warnings may be appropriate until familiarity is obtained depending upon the nature of the law and nature of violation;

h. Violations resulting in traffic accidents: When the investigating officer has probable cause to believe that a driver committed a violation or violations contributing to a motor vehicle accident, the officer shall either cite or arrest the violating driver. When the officer’s investigation reveals probable cause to believe that both drivers committed violations that contributed to the motor vehicle accident, the officer shall cite both drivers. The only time no citation will be issued in a motor vehicle accident is when no violations can be reasonably determined. The purpose of this rule is to ensure that violations related to traffic accidents are investigated and cited fairly and consistently by the Department;

i. Traffic laws pertaining to pedestrians and bicycles: City ordinances and state statutes regulate the movements of pedestrians and bicycles upon city streets and sidewalks. Officers shall be familiar with these laws. Officer discretion and judgment should be used on whether to issue a citation or warning. Most infractions related to pedestrians or the use of bicycles can be remedied by warnings. A citation shall be issued where the conduct is repeated or is relatively serious (i.e. - results in property damage or physical injury); and

j. Off-road and recreational vehicles: The operation of all-terrain vehicles having three or more tires is prohibited by ordinance within the city limits on private or public property. (STO 114.1) When investigating the use of recreational vehicles on private property, officers will attempt to contact the property owner to determine if permission has been granted to operate recreational vehicles on the owner's property. If violations of other applicable laws occur while operating a recreational vehicle, such as DUI, criminal trespassing, or criminal damage, additional enforcement action may be taken by officers. Any recreational vehicle driven upon public roadways will be held to the same motor vehicle and registration laws as any other motor vehicle.

k. Officer shall ensure that all citations contain complete and accurate information, including biographical and vehicle descriptions, offense codes and descriptions of violations in plain, concise language. Abbreviations should not be used.

E. Non Resident Violator Compact
Violations committed by nonresidents should be handled the same as those committed by residents of the State of Kansas.
F. Juvenile Offenders

Traffic offenses involving juveniles age 14 through 17 may be filed in Municipal Court. This includes driving under the influence and driving while a license is canceled, suspended or revoked. Officers should refer felony charges and any traffic offenses involving juveniles 10 through 13 to the Shawnee County Juvenile Court.

G. Legislators

Art. 2, Sec. 22 of the Kansas Constitution grants legislators immunity from arrest while going to, during, or returning from the legislative session. This immunity begins 15 days before the start of the session, and ends 10 days after adjournment (KSA 46-125 and amendments thereto.) The period generally begins around the end of December and lasts until approximately April 1 of each year, depending on the length of the session. This immunity does not prohibit arrests for treason, felonies or breach of the peace. Legislators have a statutory immunity stating they “shall not be required to appear in any court of this state” during the period of legislative immunity. (KSA 46-125 and amendments thereto). This statute does not prohibit law enforcement officers from serving legislators with a uniform complaint and Notice to Appear, even during the legislative session. A legislator can have any case pending against them continued until after the legislative session concludes. (KSA 46-126, and amendments thereto)

H. Foreign Diplomats

Foreign diplomats and consulate officers may be issued traffic citations (but may not be required to sign the citation), and may also be taken into custody for the purpose of a breath test. A copy of the citation should be mailed to the U.S. Department of State, 2201 C Street NW, Washington, DC 20520. In serious cases (DUI, personal injury accidents, etc.), officers should notify the U.S. Department of State at the telephone number below. Should questions arise, officers should consult the U.S. Department of State “Diplomatic and Consular Immunity: Guidance for Law Enforcement/Judicial Authorities” located at www.state.gov/documents/organization/150546.pdf, or contact the U.S. Department of State Operations Center at (202) 485-7703 during business hours, and (202) 647-1512 after hours.

I. Privilege of Militiamen

1. Military Personnel, State Militia, Reserve or Guard and US Military Services – Personnel are, in some cases, exempt from certain civil process. Officers should take the appropriate enforcement action (citation or arrest) regardless of
active military duty standing and shall clearly note in all reports related to the incident the claim of military exemption.

a. Exception: Persons who display a valid US Military Identification shall be exempt from those ordinances and statutes relating to expiration and renewal requirements of vehicle operators licenses for the term of the identification and an additional 30 days.

J. Immunity & Witnesses

Witnesses who come into, or pass through, Kansas pursuant to a summons issued under the "Uniform Act to Secure the Attendance of Witnesses" are immune from arrest or the service of civil or criminal process in connection with matters which arose prior to the witness coming into the state under the summons.

K. Driving with a Suspended, Cancelled or Revoked License

1. Drivers who have had their driving privileges suspended, cancelled or revoked should be cited or arrested.

2. If the violator produces a license that has been suspended, cancelled or revoked, the officer should confiscate the license.

3. In circumstances where the driver is not arrested, the driver should not be allowed to drive from the location of the traffic stop. Other arrangements may be made for another licensed driver in the vehicle or someone who can pick the vehicle up. The vehicle should not be towed if it is legally and safely parked, or on private property. If the vehicle is to be left on private property, permission from the driver and from the property owner should be obtained.

L. Parking Violations

1. Officers should enforce parking violations, particularly on violations of unlawful parking in properly marked fire lanes and handicapped parking spaces.

2. When enforcing parking violations, the officer may:

   a. Attempt to locate the owner of the vehicle and request the vehicle be removed;
   b. Issue a citation or warning; and/or
   c. Tow the vehicle when an immediate hazard is caused by the violation.

3. When there are other hazardous conditions which affect the roadway that cannot be easily corrected, such as debris, lack of reflectors, downed lines, etc.,
officers will advise SCECC to contact the proper City department for correction. If the condition may cause significant harm for safe traffic flow, the officer will advise a supervisor and remain on scene until the hazard is corrected.

5.1.5 DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS

A. In General

1. The Department places a high priority on the enforcement of alcohol and drug related driving violations. Persons who are impaired due to the use of alcohol or other drugs present a significant threat to the safety of the community. Drivers are to be routinely observed for behaviors, which may indicate the influence of drugs or alcohol. Drivers who are displaying those behaviors will be investigated further to determine the degree of impairment. An arrest shall be made where the investigating officer has probable cause to believe the driver is under the influence in violation of the law.

2. During peak DUI times as determined by statistical analysis, or during special grant funded periods (i.e. IDDP), additional personnel may be assigned to concentrate on DUI enforcement.

3. An officer's observations are crucial in detecting the alcohol or drug impaired driver and in establishing the probable cause upon which an arrest decision is made.

4. Officers should recognize, identify and report specific driving behaviors that often indicate that a driver is impaired.

5. Officers should exercise due care in stopping or pursuing the impaired driver since their actions or reactions may be very unpredictable.

6. Once the vehicle is stopped, the officer will not allow the driver to move the vehicle again until the officer determines whether the driver is fit to drive.

7. Officers should recognize, identify and report other behavior occurring during vehicle stops that provide further indications that the driver is impaired including physical appearance, behaviors and attitudes. Other observations include, but are not limited to:

   a. Odor of alcoholic beverage; and
   b. Manual dexterity in retrieving vehicle registration and driver’s license.

8. Officers should note all observations leading to the suspicion that the driver is impaired and if the officer believes that there is reasonable suspicion that
the driver may be impaired, the driver shall be requested to exit the vehicle for further investigation.

9. The driver should be directed to a safe location to conduct the field sobriety tests.

10. Officers should select, administer and record the results of standardized field sobriety tests (SFST) and others deemed appropriate to assess impairment. Standardized tests are:

   a. Horizontal gaze nystagmus
   b. Walk and turn; and
   c. One leg stand.

11. It is extremely important to document how the driver performed during the SFSTs.

12. The officer should request a preliminary breath test.

13. The officer should document any voluntary statements made by the driver as well as any answers to questions asked by the officer during the investigation regarding topics such as:

   a. Drinking - what, where, how much, with whom etc.;
   b. Eating;
   c. Medication use; and
   d. Physical impairments.

14. The officer should formulate an appropriate arrest decision for the offense based on the evidence accumulated from all the previous steps.

15. The officer shall notify the driver of the appropriate implied consent advisory according to KSA 8-1001.

16. Officers shall comply with the appropriate protocol for the breath alcohol testing equipment when requesting a breath test.

17. Blood/Urine

   a. If the officer believes that drugs are impairing the suspect, the arresting officer should request urine and/or blood tests.
   b. Officers shall have blood samples taken by a qualified medical technician and processed according to procedures specified by the KBI.
   c. The arresting officer must specify whether the blood/urine examination is for the content of alcohol and/or other drugs.
d. Containers with blood/urine specimens shall be appropriately packaged in accordance with the KBI evidence handling guidelines and personally placed in the evidence refrigerator.

e. If an officer suspects a driver who is admitted to a hospital of driving under the influence of alcohol and/or drugs, the officer shall request the driver to submit to a blood and/or urine test.

18. The officer shall secure the violator’s vehicle when possible. Officers may, in certain circumstances, release the vehicle to a licensed third party with the permission of the owner or driver.

19. The officer may arrange for the transportation or safety of any passengers.

20. Children of the arrestee, who are under the age of 16 and in the vehicle at the time of the stop, may be released to a competent legal parent or guardian. If a qualified parent or guardian is unavailable to take custody of the child or authorize other arrangements for supervision, the juvenile(s) will be transported to Juvenile Intake to be processed as Child in Need of Care (CINC).

21. All appropriate reports, forms, probable cause affidavits, and citations shall be completed, thoroughly documenting the investigation.

   a. All DUI reports shall be placed in the traffic box in the roll call room before the end of the arresting officer’s shift. The reports shall be stapled as a complete package and may include:

      1) DC-70 Implied Consent Advisory;
      2) DC-27 Officer’s Certification and Notice of Suspension;
      3) DC-28 – Persons under the age of 21 with a BAC of .02 through .079;
      4) CDL5 – DUI suspect operating a commercial motor vehicle and has a commercial driver’s license with a BAC of .04 or greater;
      5) Alcohol/Drug Influence Report;
      6) Intoxilyzer operating protocol;
      7) Intoxilyzer test print out;
      8) Suspect’s driver’s license; and
      9) Any additional forms, as required.

22. DUI Conference Call

   a. The State of Kansas shall treat this procedure the same as any court hearing. Officers failing to respond to a conference phone call when required by subpoena may be considered in ‘contempt of court,’

   b. The subpoena will indicate whether the officer shall appear in person or via a conference call.

   c. If the subpoena requires a conference call appearance:
1) The call should take place in the DUI room or other suitable location;
2) The officer shall immediately call the Department switchboard (368-9551) and give the switchboard operator their name, tell them they will be receiving a call from the State regarding a DUI subpoena and give them the DUI room extension.
3) The officer must be in that room ready to answer the phone at the designated time indicated on the subpoena.

B. Drug Recognition Expert (DRE)

1. An arresting officer may request a DRE be summoned to evaluate a suspect to determine if a subject is under the influence of drugs if:
   a. The suspect is under arrest for DUI and/or drug impairment.
   b. The arresting officer has exhausted all DUI testing methods and found insufficient evidence establishing probable cause to believe the suspect is under the influence of alcohol. <61.1.11>
   c. The suspect must not have invoked his/her Miranda rights.
   d. If the suspect has been involved in an accident, the investigating officer should call the DRE. The DRE will base his/her decision to respond on three criteria:
      1) Injuries sustained in the accident;
      2) Elapsed time since the accident; or
      3) The DRE’s proximity to the location.

2. The arresting officer should be present upon the arrival of the DRE for interview.
3. Effective DRE evaluations must be conducted within 3 hours of the arrest.
4. If elapsed time between arrest and evaluation exceeds 3 hours the DRE may elect not to conduct the evaluation.
5. If the suspect’s impairment is determined to be from a drug other than alcohol, the arresting officer or the DRE will collect a urine sample or request a blood draw, and submit that sample for laboratory analysis. The suspect may refuse impairment testing.
6. The DRE will give the arresting officer a copy of the evaluation and laboratory report when it is completed.
7. Any officer may call out a DRE by notifying the Watch Commander. The Watch Commander has the final authority when calling out a certified DRE. The Department’s DRE may assist other agencies when requested to do so and upon approval of the Watch Commander.
C. Impaired Drunk Driving Project (IDDP)

1. Only those officers eligible and trained may participate in working IDDP and must submit a memo through the chain of command for authorization.
2. Officers must complete the IDDP activity log at the conclusion of their shift.
3. Officers must follow the rules and guidelines set forth in working IDDP.

5.1.6 TRAFFIC STOPS

A. Traffic Stop Procedure

Officers will remain aware of officer safety factors at all times due to the unknown elements of the traffic stop. Since no two traffic stops are exactly alike, the following guidelines are recommended for basic traffic law violators and unknown risk stops:

1. Notify SCECC of the location as well as the license plate number and description, (color, make and model), of the violator’s vehicle, and when possible, a description and number of occupants of the vehicle prior to making contact with the violator;
2. Consider officer safety tactics on every stop;
3. Advice SCECC of the disposition of the stop when the vehicle has left the scene.

B. High Risk Stops

1. When a stop is or becomes a high risk stop; officers shall notify SCECC as soon as feasible.
2. During high risk traffic stops, officers will generally follow the above procedures, with the following exceptions:
   a. Wait for a back-up unit before utilizing emergency equipment and conducting the traffic stop, when possible;

5.1.7 SPEED DETECTION DEVICES

A. Usage

1. The Department may use speed detection devices in high or potentially high accident locations where excessive speed is a factor, in areas where speed limit violations are prevalent, and in response to citizen complaints concerning speeding motorists.
2. The Department shall only utilize speed detection devices that are listed on the NHTSA (National Highway Traffic Safety Administration) list of approved units.
B. Training

All officers using speed detection devices must successfully complete an initial basic operator program and receive certification prior to issuing citations utilizing speed detection devices. Officers will attend re-certification training as required.

C. Care and Maintenance

1. Officers shall test the device for accuracy at minimum, at the beginning and end of each tour of duty in accordance with manufacturer’s procedures. It is recommended to test after each. Officers will document each test. If the test fails, the unit shall be taken out of service.

2. Each unit shall have regular scheduled maintenance performed at a licensed facility approved by the manufacturer. Records of all maintenance and calibrations shall be kept by the designated personnel.

3. Officers shall be responsible for the care and upkeep on a continual basis, including cleanliness of units and reporting needed repairs.