



Fire and Police Commission

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FPC Informational Memorandum: Referral of Individuals to the Wisconsin Department of Motor Vehicles (DMV) for Driver's License Reexamination

Issue:

The Wisconsin Department of Motor Vehicles (DMV) is the state agency that is responsible for issuing motor vehicle drivers licenses. Wisconsin State Statute sec. 343.16 (5) (6) authorizes a law enforcement officer to refer a licensed driver to the DMV for a retest of the written and road test under certain circumstances. The statute states that the DMV may reexamine drivers when the Department has "good cause" to believe that the driver is incompetent or otherwise not qualified to be licensed. The intent of the statute is to identify licensed drivers that have become physically or mentally incapable of operating a motor vehicle prior to a scheduled renewal test. Wisconsin driver licenses are currently renewed every eight years.

After conducting a traffic stop for a moving violation, some Milwaukee Police Department (MPD) members are submitting reports to the DMV for a driver to undergo a reexamination to maintain their driver's license. In a case brought to the attention of the Fire and Police Commission (FPC), the complainant was stopped for a speeding violation. When the complainant was asked by the officer if they were aware of what the speed limit was, the complainant responded with an incorrect speed that was 5 mph different than the posted limit. As a result, the officer referred the complainant for reexamination due to the complainant's "lack of knowledge of the rules of the road." The complainant subsequently received notification from DMV to report for reexamination. The reexamination required the complainant to take a day off from her employment, complete the entry level written driver's examination, undergo a complete road test examination, and pay the fees associated with the testing process.

The MPD report filed by an Officer to refer an individual for reexamination is the MV3141. MPD enters the MV 3141 report into its standard electronic record keeping system (TRACS). Under current procedure MPD does not require a supervisor's review of the MV3141 prior to its submission to DMV.

Findings:

When individuals are stopped by MPD for a traffic violation, it is not unusual if they may become nervous or apprehensive. When an individual is asked whether they know what the posted speed limit is, the individual may not want to tell the officer what the correct speed limit is, for fear of admitting to speeding, or the individual simply may not be aware of the posted speed limit. An inability to state the actual posted speed limit during a traffic stop is not cause for referring an individual for a reexamination. Likewise, an individual that exhibits nervousness or anxiety during a traffic stop should also not normally be cause for a reexamination. A referral for reexamination should only be based on quantifiable and reliable information beyond mere suspicion that the individual may not be competent to operate a motor vehicle. For example, an elderly individual that is involved in a minor traffic accident and exhibits obvious signs of significant vision impairment during the accident investigation may be a candidate for a reexamination.

During its investigation of this matter, the FPC identified other instances in which officers inappropriately referred individuals to the DMV for reexamination. It was not determined whether the officers inappropriately referred individuals to the DMV due to the officer's lack of understanding of the legal requirements for referral or for some other reason, such as intent to purposely inconvenience a driver that may have been perceived by the officer as discourteous during the traffic stop. It was determined that unnecessarily burdening an individual by referral to the DMV for reexamination simply because the individual stated an incorrect speed limit is not appropriate procedure, and is a misapplication of the statutory authority granted to a law enforcement officer.

Supervisory review and approval of the MV3141 report prior to submission to the DMV will eliminate the potential for an officer to inappropriately refer an individual for a reexamination. This revised procedure will ensure that MPD officers are appropriately utilizing the referral for a reexamination as it is intended by state law. The MPD will initiate the revised procedure of supervisory review and approval upon publication of this memorandum.

(7/30/10)