

Readopt Tra 311, effective 7-27-12, (Document #10165), to read as follows:

PART Tra 311 DRIVING WHILE IMPAIRED (DWI) VICTIM FATALITY SIGN PROGRAM

Tra 311.01 Purpose. The purpose of this part is to implement the statutory requirements set forth in RSA 236:48-a regarding the erection and maintenance of a DWI victim fatality sign memorializing individual(s) fatally injured in a traffic accident occurring after July 1, 2006 in which there is substantial evidence gathered by law enforcement that another driver caused the accident and was driving in violation of RSA 265-A:2 or RSA 265-A:3.

Tra 311.02 Scope. DWI victim fatality signs may be erected upon state highways under the jurisdiction of the department other than limited access divided highways or the ramps and access roadways used to access or exit such highways.

Tra 311.03 Definitions.

- (a) "Abutting landowner" means a person or persons with ownership of the property directly abutting the state owned right-of-way where the DWI victim fatality sign is to be located.
- (b) "Bureau" means the bureau of traffic within the New Hampshire department of transportation.
- (c) "Commissioner" means the commissioner of the department of transportation.
- (d) "Department" means the New Hampshire department of transportation.
- (e) "DWI sign assembly" means the composite of a message panel, memory panel, name plaque(s), and support post or any combination thereof of a DWI victim fatality sign installation.
- (f) "Memory panel" means a sign panel designed by the bureau with the message "In Memory of".
- (g) "Message panel" means a sign panel designed by the bureau with the message "Please Don't Drink and Drive".
- (h) "Name plaque" means a plaque manufactured by the bureau of traffic stating the name of the victim(s) of a traffic accident and attached to a DWI sign assembly.
- (i) "Next-of-kin" means the person having the following relationship to the victim, in the following order of priority:
 - (1) Spouse;
 - (2) Adult son or daughter;
 - (3) Parent;
 - (4) Adult brother or sister;
 - (5) Adult grandchild;
 - (6) Adult niece or nephew who is a child of a brother or sister;

- (7) Maternal grandparent;
- (8) Paternal grandparent;
- (9) Adult aunt or uncle; or
- (10) Any other adult legal relative in descending order of relationship.

(j) "Substantial evidence" means a certified copy of conviction for violation of RSA 265-A:2 or RSA 265-A:3.

(k) "Traffic accident" means an event occurring on a public way that results in injury or property damage attributed to the motion of a motor vehicle or its load.

(l) "Victim" means a person fatally injured as a direct result of a motor vehicle traffic accident or whose death occurred within 30 days of the event as a result of physical injuries sustained during a motor vehicle traffic accident. The term does not include an impaired driver or an occupant of the impaired driver's vehicle, but does include pedestrians or bicyclists injured by an impaired driver, as defined under RSA 265-A:2 or RSA 265-A:3.

Tra 311.04 Request for a DWI Sign Assembly, Name Plaque, or Both.

(a) An applicant requesting a DWI sign assembly, name plaque, or both, shall provide the following information to the bureau of traffic on or with the "Driving while Impaired Victim Fatality Sign Application" furnished by the bureau of traffic:

- (1) The name, address, and telephone number, or other means of contacting the applicant during regular business hours;
- (2) The applicant's relationship with the victim;
- (3) The date of the traffic accident;
- (4) The location of the traffic accident, including the street and town;
- (5) The name of the motor vehicle driver driving while intoxicated or under the influence of drugs;
- (6) The name of the individual(s) fatally injured, as it or they should appear on the name plaque(s), and the name of the nearest living relative and their relation to the victim(s);
- (7) the name of the investigating police agency;
- (8) A certified copy of a conviction for violation of RSA 265-A:2 or RSA 265-A:3 by one of the drivers involved in the fatal accident, to establish that the driver who was at fault for the traffic accident was impaired by drugs or alcohol and that the individual(s) to be memorialized was fatally injured in the traffic accident;
- (9) An affidavit by the applicant that the individual(s) to be memorialized was fatally injured in the traffic accident and that there is substantial evidence gathered by law enforcement that the other driver was at fault and that drugs or alcohol were involved; and

(10) The required fee of:

- a. \$250.00 if a DWI sign assembly for the traffic accident does not exist; or
- b. \$200.00 to add a name plaque to an existing DWI sign assembly for a victim of the same traffic accident.

(b) Notwithstanding (a)(8) above, if a certified copy of conviction is not available due to lack of prosecution due to death of the impaired driver or other inability to prosecute unrelated to sufficiency of evidence, then the following documents shall be considered by the department in determining that one of the drivers was at fault and impaired by drugs or alcohol:

- (1) Relevant medical records to show the driver in a vehicle collision was impaired by drugs or alcohol;
- (2) Investigating officer's accident report that indicates the driver of one of the vehicles was impaired by drugs or alcohol; or
- (3) Other reliable records provided by the applicant indicating one of the drivers was impaired due to drugs or alcohol.

Tra 311.05 Review of Request.

(a) A request for a DWI sign assembly shall only be requested by the victim's next-of-kin. A request may include application for the name of an additional victim of the same accident, provided the applicant obtains the written consent of the other victim's next of kin.

(b) The bureau of traffic shall approve a request for a DWI sign assembly unless an office review, comments from a maintenance district, or a field review of the proposed location discloses an issue sufficient to deny the request under Tra 311.05(c), Tra 311.05(d), or Tra 311.07.

(c) The bureau of traffic shall conduct an office review of the request for a DWI sign assembly. In the event of an incomplete application, the bureau shall request that the applicant provide the additional information. If the information is not provided within 90 days, the bureau of traffic shall deny the application.

(d) Once the application and all required documents are complete, the bureau of traffic shall conduct a field review of the proposed location and within 60 days, or as staffing permits, shall deny the application if the proposed location:

- (1) Limits a road user's ability to see an existing official traffic control device far enough in advance to act upon the message;
- (2) Would result in confusion for the road user due to the presence of multiple official traffic control devices, private signs, driveways, or turning movements;
- (3) Would interfere with highway maintenance efforts; or

(4) An abutting landowner objects to the location and relocation cannot be accommodated.

Tra 311.06 Manufacture.

- (a) Unless otherwise specified, the specifications for message panels and name plaques, shall conform to the pertinent requirements of signs as set forth in the 2016 edition or as amended, of the department's "Standard Specifications for Road and Bridge Construction" available on-line or from the department;
- (b) Message panel text shall be limited to the phrase "PLEASE DON'T DRINK AND DRIVE"; and
- (c) Memory panels shall comply with the following:
 - (1) Text shall be limited to the phrase "IN MEMORY OF" with the name of the victim(s), limited to 4 names per plate; and
 - (2) A DWI sign assembly installed without at least one name plaque shall not include a memory panel.

Tra 311.07 Location.

- (a) A DWI sign assembly shall be located on the right hand side of the roadway at a location to be determined by the department in compliance with these rules.
- (b) A DWI sign assembly shall be erected no further than one mile in either direction of the traffic accident site except as determined by the department:
 - (1) As necessary to integrate with other official traffic signs; or
 - (2) As necessary to prevent distraction of motorists due to the number of existing official and private signs, traffic control devices, and driveways.
- (c) A DWI sign assembly shall only be erected adjacent to the same roadway as the traffic accident site except in the case of an at-intersection traffic accident, the sign shall be placed adjacent to either of the involved roadways.
- (d) A DWI sign assembly shall not be erected in any area prohibited by law, including the interstate system, turnpike, or other limited access divided highway system.

Tra 311.08 Maintenance of a DWI Sign Assembly, Name Plaque, or Both.

- (a) A DWI sign assembly, name plaque, or both, damaged by normal maintenance, vandalism, or weather conditions shall be replaced by the department at no cost to the applicant.
- (b) Any placement of paraphernalia including but not limited to flags, pennants, banners, wreaths, balloons, or other objects shall not be permitted attached to or near a DWI sign assembly or name plaque and shall be removed by the department without notice.

(c) The department shall not be responsible for damage that occurs to any object occasioned by removal or transport, nor shall the department be responsible for storage.

Tra 311.09 Effects of Construction and Highway Maintenance.

(a) If the approved location of a DWI sign assembly is within a construction or highway maintenance project area:

(1) The bureau shall not install the DWI sign assembly and name plaque(s) until such time as the construction or highway maintenance project has been completed; or

(2) If a DWI sign assembly has been installed the department shall remove the DWI sign assembly and name plaque(s) and store them until such time the project is complete and the DWI sign assembly and name plaques can be re-installed.

(b) The time in which a DWI sign assembly and name plaque are being stored due to Tra 311.09(a)(1) or Tra 311.09(2) shall not be counted toward the 2-year duration established by Tra 311.10(a).

Tra 311.10 Removal of a DWI Sign Assembly, Name Plaque, or Both.

(a) A name plaque for any victim shall be erected for a period of 2 years from the date of installation, not including time stored per Tra 311.09 (a)(2).

(b) Upon completion of the 2 years the bureau shall:

(1) Remove the name plaque; and

(2) Notify the applicant at last known address, who may claim the name plaque within 30 days of removal.

(c) The department shall not be responsible for damage to the name plaque occasioned by removal, transport, or storage, nor shall the department be responsible for storage over 30 days.

(d) A DWI sign assembly shall be removed upon the removal of the last remaining name plaque on the assembly in accordance with Tra 311.10(a) and shall remain the property of the bureau.

Tra 311.11 Hearings.

(a) An applicant who disagrees with the decision of the bureau of traffic to deny a request for a DWI fatality sign assembly, name plaque, or both may appeal to the commissioner pursuant to Tra 200 within 30 days after the date of notice of the decision.

(b) Unless an appeal is filed, the denial shall become final 30 days after the date of notice of the decision.

(c) The procedure used to conduct hearings on denials shall comply with RSA 541-A and Tra 200, rules of practice and procedure.

(d) The department shall determine eligibility for the victim fatality signs. The applicant's right to appeal shall be limited to the determination of eligibility for the sign in accordance with these rules.

APPENDIX

Rule	Statute Implemented
Tra 311.01	RSA 236:48-a, I
Tra 311.02	RSA 236:48-a, III
Tra 311.03	RSA 236:48-a
Tra 311.04	RSA 236:48-a, I
Tra 311.05	RSA 236:48-a, I, II, III
Tra 311.06	RSA 236:48-a, IV, V
Tra 311.07	RSA 236:48-a, , III
Tra 311.08	RSA 236:48-a, III, VI
Tra 311.09	RSA 236:48-a, III, VI
Tra 311.10	RSA 236:48-a, II, VI
Tra 311.11	RSA 236:48-a; 541-A:31-36, 21-L:15