




## ARLINGTON COUNTY POLICE DEPARTMENT DIRECTIVE MANUAL

<b>Chapter: 5</b> Procedures	<b>Effective Date:</b> May 4, 2017	<b>Amends/Supersedes:</b> March 15, 2011 September 22, 2010 July 1, 2009 March 1, 2005	<b>By Authority of the Chief of Police</b>  Charles A. Penn
<b>Accreditation Standard(s):</b> OPR.07.01, OPR.07.02, OPR.07.03, OPR.07.04, OPR.07.05			

### 541.05 DUI Arrests

#### I. Policy

Enforcement of Driving Under the Influence (DUI) is a complex and demanding law enforcement responsibility. The objective of DUI enforcement is to detect, arrest, and sustain a conviction of all persons charged with driving or operating a vehicle under the influence of alcohol or drugs. This is accomplished by a thorough investigation and an officer's ability to clearly articulate the gathering of evidence and probable cause in support of a decision to arrest for driving under the influence.

#### II. Definitions

- A. Preliminary Breath Test (PBT) - A pre-arrest breath test administered during the investigation of DUI to obtain an indication of a person's blood alcohol concentration (BAC). The results of the test or refusal to submit to it may not be used as evidence in any subsequent prosecution for DUI. The PBT results may be used to show probable cause for arrest during a suppression hearing. The officer should, however, consult with the prosecutor before testifying to the PBT results.
- B. Implied Consent – Under the *Implied Consent* statute ([Code of Virginia §18.2-268.2](#)), notification to a DUI suspect that any person who operates a motor vehicle upon a public highway in the Commonwealth has, as a condition of such operation, given consent to have samples of breath, blood, or both blood and breath taken for chemical tests to determine the alcohol and/or drug content of his blood, and unreasonable refusal to do so constitute grounds that can lead to the revocation of the privilege of operating a motor vehicle on the highways of this Commonwealth.

The Implied Consent law, does not apply when driving on private property. Also, the Commonwealth does not proceed under the Implied Consent statute in a DUI related fatal accident. Therefore, Implied Consent should not be read to a suspect in a fatal accident case.

- C. Evidentiary Breath Test (EBT) - A chemical analysis of a breath sample to determine the blood alcohol concentration of a person arrested for driving while under the influence. The results of this test can be used as evidence in any subsequent prosecution for DUI.

- D. Blood Test - The withdrawal of a sample of blood for chemical analysis from a person arrested for driving while under the influence, to determine the alcohol or drug content of the blood if the breath test is not available. The results of this test can be used as evidence in any subsequent prosecution for DUI.

### **III. Procedure**

- A. Reasonable Suspicion - Officers must be able to clearly articulate the reasonable suspicion (i.e. erratic driving behavior, accident, semblance of intoxication) for stopping any driver who is suspected of driving or operating a vehicle while under the influence.

B. Pre-arrest Screening

1. Initial Interview - When a driver is stopped for suspicion of DUI, an officer will conduct an initial interview in an attempt to identify any indication of alcohol impairment. The initial interview also provides officers the opportunity to identify individuals who may be suffering from a medical problem that produces symptoms similar to alcohol impairment.

During the initial interview, the officer should ask questions, which at a minimum, indicates the driver has consumed intoxicants and/or medication, and whether the driver is physically able to perform any field sobriety tests.

2. Field Sobriety Tests - Field sobriety tests focus on those dexterities essential for safe driving. They are identified as the capability to divide attention between tasks, balance, coordination, and information processing. The following tests have been accepted by the Arlington Courts:

- Alphabet test.
- Countdown test.
- Finger Count test.
- Walk and Turn test.
- One Leg Stand test.
- Horizontal Gaze Nystagmus (Requires specialized training to administer).

A minimum of three (3) tests should be administered when conducting a DUI investigation. These should include walk and turn, one leg stand, and at least one additional test. Ideally, an officer should routinely conduct the same tests in the same order in each instance of a DUI investigation for purposes of clarity and recollection in courtroom testimony.

3. Preliminary Breath Test - After administration of the initial interview and field sobriety tests the officer must offer the suspect a PBT, if available, prior to making an arrest for DUI. The Code of Virginia requires that the officer advise the person:

- Of the right to take the test if the equipment is available.
- Of the right to refuse the test.

- The results of the test nor the refusal to take it can be used in a DUI prosecution.
- Of the right to see the test and its results.

A preliminary breath test should not be conducted prior to the administration of any field sobriety tests or after an arrest for DUI has taken place.

### C. Arrest Procedure

1. Traffic Stop - When a DUI arrest is made on a public roadway, the arrestee should immediately be read the Implied Consent law and then transported to the Arlington County Detention Facility for a breath test.

Arrestees must voluntarily consent to provide breath or blood samples (if breath test is not available) for analysis and should complete a Consent to Search form.

The arresting officer should stay with the arrestee, if possible, for chain of custody issues. If applicable, the arresting officer should note the names of attending medics and what medications, if any, were administered to the arrestee.

Once a person is placed under arrest for DUI, the arresting officer should handcuff the suspect with his/her handcuffs. The handcuffs, when possible, should remain on the arrestee while in booking until the arresting officer arrives at the jail and removes the handcuffs.

The arresting officer must be able to identify his or her handcuffs either by serial number or other markings, such as a name or administrative number.

The arresting officer should check the transport vehicle, before and after transport, for alcohol or other substances and note whether or not other arrestees were transported in the same vehicle or compartment. To avoid any chain of custody issues, the arresting officer must place the arrestee in handcuffs, follow the transporting wagon or prisoner transport car to booking, and then remove the arrestee's handcuffs.

The arrestee should be taken before a magistrate only after the completion or refusal of a breath or blood test. [ACPD Directive 522.05 Juvenile Offenders](#) provides additional guidance in reference to juvenile offenders.

In cases where the DUI suspect is operating a Commercial vehicle, refer to the [Code of Virginia §46.2-341.24, Driving a commercial motor vehicle while intoxicated, etc.](#) Handle the arrest as stated in **III. Procedure** of this directive; however, know that there are different penalties for a DUI driver with a BAC of .04 and a BAC of .08 and greater. If the commercial vehicle driver has a BAC between .04 and .08, the driver may be charged with a Class 3 misdemeanor. If the commercial vehicle driver has a BAC of .08 or greater, the driver will be charged with a Class 1 misdemeanor.

The officer should complete any paperwork routinely associated with a criminal arrest and show the magistrate a copy of the following:

- a. The Certificate of Breath Alcohol Analysis.
- b. The Criminal Complaint form - include the following information:
  - Reason for the stop.
  - Field tests given and overall performance.
  - Results of preliminary breath test.
  - Advisement of Implied Consent.
  - BAC result.
- c. The arrestee's DMV driver transcript.
- d. The court copy of a completed *Virginia Uniform Summons* (VUS).
- e. The top two copies of the *Administrative License Suspension* form if the BAC is greater or equal to .08 or a refusal.

The magistrate will keep a copy of the criminal complaint form, the court copy of the VUS and the *Administrative License Suspension* form.

Upon issuance of a warrant for DUI, or refusal, an officer must complete a *Notice of Administrative Suspension of Driver's License/Driving Privilege* form and place the arrestee's driver's license in a white envelope with the arrestee's return mailing address. Officers will not take possession of out of state licenses for purposes of administrative suspension. The arresting officer shall forthwith provide the ECC with a copy of this form and the ECC will electronically transmit this information to the DMV.

The arresting officer must also complete a DUI report along with a copy of the *Certificate of Breath Alcohol Analysis*, (white and yellow copies), *Notice of Administrative Suspension of Driver's License/Driving Privileges* and the operational checklist for the EBT device or blood checklist.

The arresting officer will also turn in a copy of the VUS (yellow copy) and a case report documenting the arrest to the ACPD Records Management Unit.

The arrestee should be provided with a copy of the DUI warrant, *Certificate of Breath Alcohol Analysis* (green copy if applicable), the *Notice of Administrative Suspension of Driver's License/Driving Privilege* form and information regarding the return of the arrestee's vehicle and any property held for safekeeping. If blood was drawn, the laboratory request form for the arrestee's sample of blood should also be given.

2. Accident – [Code of Virginia §19.2-81\(C\) Arrest without warrant authorized in certain cases.](#), includes the definition of an accident as:

“A reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.”

In addition to the other facts and circumstances, [Code of Virginia §19.2-81\(D\)](#) provides:

“Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of [§18.2-266, \(Driving motor vehicle, engine, etc., while intoxicated, etc.\)](#), [§18.2-266.1 \(Persons under age 21 driving after illegally consuming alcohol; penalty\)](#), [§46.2-341.24](#), or subsection B of [§29.1-738 \(Driving a commercial motor vehicle while intoxicated, etc.\)](#), or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to [§29.1-738.4 \(Additional penalty for reckless or intoxicated operation of a watercraft or motorboat.\)](#), whether or not the offense was committed in such officer's presence.

When a DUI suspect is involved in an accident, the officer may arrest at the scene or at any medical facility located in Arlington County. The arrest must occur within three hours of the accident for the Implied Consent law to apply. After three hours have passed from the time of the alleged offense, the Implied Consent law is inapplicable and breath or blood samples should be obtained based on a search warrant.

A VUS may be issued for DUI when exigent circumstances prevent transportation of an arrestee to the Detention Facility, such as in the case of a serious accident where the arrestee is the injured party.

Within three hours of the alleged offense, an officer may arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated. However, if a suspect involved in an accident flees the scene prior to the arrival of police and is not at a medical facility, a warrant must be obtained from the magistrate prior to the arrest. [ACPD Directive 542.01 Motor Vehicle Accidents](#) provides additional guidance in reference to motor vehicle accidents.

#### D. Chemical Tests

1. Evidentiary Breath Test (EBT) - A breath or blood test is obtained under the Implied Consent statutes. The statutes provide that the implied consent applies when the suspect is arrested within three hours of the offense (the driving). Be certain to record the time of observation of the driving and the time of the arrest. In an accident case, get the time of the accident from the suspect and any witnesses.
  - a. Location - Persons who provide a sample of breath for chemical analysis should be transported to the Detention Facility.

- b. Operator Duties - EBT operators must be licensed by the Department of Criminal Justice Services Division of Forensic Science of the Commonwealth of Virginia. It is the responsibility of the EBT operator to complete the operational checklist, logbook, and Certificate of Breath Alcohol Analysis. A copy of the Certificate of Breath Alcohol Analysis must be given to the individual tested and the individual's signature obtained, or refusal to sign noted, on the yellow copy. The remaining copies are given to the arresting officer.

EBT operators shall notify the officer responsible for preventive maintenance of any instrument malfunctions or shortage of supplies. In the event of an instrument malfunction, the arresting officer should maintain custody of the arrestee and insure the arrestee's transport to an approved facility with EBT equipment. An EBT operator will respond to that location to conduct testing of the arrestee. When no ACPD EBT operators are available to conduct testing, an EBT operator from another jurisdiction may conduct the test if licensed by the Department of Criminal Justice Service, Division of Forensic Science, of the Commonwealth of Virginia.

## 2. Blood Tests

- a. Location - Persons providing a sample of blood for chemical analysis should be transported to an approved medical facility for collection of the blood sample.
- b. Duties of Arresting Officer - The procedures for taking samples of blood for chemical analysis to determine the alcohol or drug content of the blood are governed by the Code of Virginia. The results of chemical analysis of blood samples are sent directly to the Clerk of the General District Court. ACPD Directive [540.04 Blood Samples in Fatal Accidents](#) provides additional guidance in reference to blood tests.

The arresting officer is responsible for ensuring that the blood checklists are filled out appropriately with an emphasis on the following: identification of the registered nurse, doctor or graduated laboratory technician drawing the blood; identification of the arm used for blood withdrawal; what the arm was cleansed with (note the sterile packaged needle/syringe), and the chain of custody of the blood sample.

- c. Blood Test for Driving Under the Influence of Drugs - A person who is suspected of driving under the influence of drugs should be given a blood test under the Implied Consent statute.

If the suspect is taken to a D.C. hospital, do not proceed under the Implied Consent statute. Instead, have blood drawn by consent under exigent circumstances with exceptions to warrant requirements. [ACPD Directive 540.04 Blood Samples in Fatal Accidents](#) provides additional guidance.

3. Refusal - If a person unreasonably refuses to take any chemical test, the arresting officer shall inform the DUI arrestee of the possible penalties for refusing to submit to an evidentiary blood or breath test. The officer shall read the form provided by the Office of the Executive Secretary of the Supreme Court to the arrestee to transmit this information, and shall initial, date, and note the time of the refusal on the form the form to acknowledge that it has been read to the arrestee.

When a person involved in a fatal or serious injury accident refuses to submit to chemical tests of their blood, is physically unable to take a test or the Implied Consent law does not apply, a search warrant for samples of blood should be obtained.

- E. Miranda warning - A person under arrest must be advised of their rights prior to any custodial interrogation. However, questions related to a motor vehicle accident report do not require a Miranda warning as long as the individual is not in custody or the questions are administrative in nature.

The administration of a breath test or the taking of blood for chemical analysis are forms of physical evidence collection. An arrestee has no right to counsel prior to a hearing by a magistrate.