



WRITTEN DIRECTIVE	No. FO22-0815	Page: 1 of 8
Subject: DUI COUNTERMEASURES	Effective Date:	09-20-22
	Supersedes/ Amends:	FO14-0815
	Reference:	61.1.10, 61.1.9, 82.2.1, 61.1.5



I. Purpose

The purpose of this directive is to establish guidelines for countermeasures and enforcement action related to driving under the influence of alcohol and/or drugs.

II. Policy

It shall be the policy of the Field Operations Bureau to aggressively pursue driving under the influence (DUI) enforcement activities.

III. Procedure

A. GENERAL

1. On duty officers, regardless of assignment, will be responsible for taking appropriate action should they observe a suspected DUI during the course of their daily activities.
2. All officers, through recruit and roll call training, will be familiar with:
 - a. applicable statutes related to operating motor vehicles (including mopeds) while under the influence of intoxicants and drugs, to include sections 18.2-266 through 18.2-269 and 46.2-341.24 through 46.2-341.26.2 of the Code of Virginia.
 - b. recognition of vehicle operators impaired by intoxicants or drugs,
 - c. DUI investigation at accident scenes,
 - d. use of standard field sobriety tests,
 - e. use of the Preliminary Breath Test (PBT), and
 - f. legal and procedural changes involved in DUI detection, arrest, and processing.

3. DUI arrests and related procedures will be documented by the means of:
 - a) incident report
 - b) *DUI Checklist* (optional) with the original submitted electronically and a copy delivered to the Magistrate.
 - c) *Criminal Complaint* (State form which is required in cases of breath test results of .08% or more, persons under the age of 21 arrested for DUI with breath test results of .02% or more, or refusal) with the original submitted to the Magistrate and a copy submitted with the other paperwork. The Criminal Complaint will document at a minimum:
 - 1) a brief explanation of when and where the first contact was made with the suspect driver and vehicle (establishing venue)
 - 2) a brief explanation of what facts led the officer to stop the vehicle or contact the suspect driver (establishing probable cause to stop)
 - 3) observations that led to administering the field sobriety tests
 - 4) the results of field sobriety tests administered
 - 5) result of Preliminary Breath Test if offered and taken
 - 6) in a case where the Preliminary Breath Test was not offered, the reasons why it was not offered
 - 7) results of the Intoxilyzer test or the facts that led to obtaining a warrant or summons for refusal
 - 8) if a Criminal Complaint form is not required, all of the information listed above will be documented within the incident report.
 - d) *Acknowledgment/Declaration of Refusal-Breath/Blood Test* (State form)
 - e) *Administrative License Suspension* (State form, if applicable)

B. SELECTIVE ENFORCEMENT

1. The Field Operations II Bureau Captain will be responsible for coordinating DUI selective enforcement activities, and will:
 - a. administer grant-funded DUI enforcement programs, and
 - b. ensure that participating officers from other bureaus are trained in applicable Field Operations Bureau directives.

2. Computer-generated data will be analyzed and used to identify target areas for DUI selective enforcement activities.
3. Selective enforcement data will be derived from sources outlined in directive FO-0809: *Selective Enforcement*.
4. DUI selective enforcement patrol will be conducted according to procedures outlined in directive FO-0801: *Traffic Patrol Techniques*
5. Traffic stops will be initiated according to procedures outlined in directive PD-2018: *Stopping and Approaching Traffic Violators*.
6. DUI selective enforcement checkpoints will be conducted and documented according to procedures outline in PD-0802: *Traffic Direction and Control*.

C. FIELD SOBRIETY TESTS

1. Field sobriety tests will be offered to any person suspected of DUI.
 - a. Tests will be of a type that will assist in determining a vehicle operator's level of impairment and are recognized by the Lynchburg Court system.
 - 1) It is recommended that officers use the Standard Field Sobriety Tests, to include in the following order:
 - a) Horizontal Gaze Nystagmus
 - b) Walk and Turn test, and
 - c) One Leg Stand test.
 - a) Officers may also use the following tests: Alphabet Recitation (reciting a specified portion of the alphabet),
 - b) Finger to Nose
 - c) Finger Dexterity test.
 - d) Any test in which the officer has received training.
 - 2) A suspect's physical limitations may prompt the use of other tests to aid officers in determining the level of intoxication.
- b. Tests will be administered in the safest location available to the investigating officer.

2. Use of the Preliminary Breath Test (PBT):
 - a. The officer is required to offer a PBT to the vehicle operator prior to arresting him/her for DUI (Code of Virginia 18.2-267).
 - b. The officer will advise the vehicle operator of his/her right to perform or refuse a PBT pursuant to COV 18.2-267.
 - c. The PBT will be administered according to device instructions.
 - d. When determining if sufficient probable cause exists to arrest for DUI, the officer should consider the results of the PBT (if administered) in combination with all other field sobriety tests administered. The officer should keep in mind that the results of the PBT are usually not admissible in court.
 - e. Should the suspect refuse to perform field sobriety tests or fail to submit to a PBT, the officer will determine if sufficient probable cause exists for a DUI arrest based solely on his/her observations.

61.1.11**D. ARREST OF VEHICLE OPERATOR**

1. Upon arrest, the officer will advise the vehicle operator of the following:
 - a. Virginia Implied Consent Law (Code of Virginia 18.2-268.2), if applicable, and
 - b. Miranda Warning (prior to asking any incriminating questions).
2. The arrestee will be transported to the Magistrate's Office unless medical treatment is necessary at the hospital.
 - a. Transport of the arrestee will be in accordance with procedures outlined in PD-2004: *Prisoner Transport*.
 - b. Removal of the violator's vehicle from the scene, if necessary, will be follow procedures outlined in PD-0801: *Towing of Vehicles*.
 - c. Officers will ensure that DMV and Criminal History records are obtained to determine any previous convictions for DUI or Refusal of Breath or Blood Test. This information will be provided to the Magistrate and be used to determine appropriate charge(s) pursuant to the Code of Virginia.
3. If the arrestee refuses a breath or blood test after being advised of the Implied Consent Law the officer will:
 - a. Note the refusal and will not allow the arrestee to perform the test regardless of a later request,

- b. Complete the Acknowledgement/Declaration of Refusal-Breath/Blood Test form and submit it to the Magistrate,
 - c. Obtain a warrant or summons charging the arrestee with refusal to take a breath or blood test, and
 - d. Serve the arrestee a Notice of Administrative Suspension of Driver's License form in accordance with COV 46.2-391.2 with the appropriate suspension period noted.
4. If the arrestee is transported to the hospital and requires admission, the officer may obtain a summons for DUI and, if appropriate, refusal in lieu of obtaining an arrest warrant(s).

E. TESTING TO DETERMINE BLOOD ALCOHOL CONTENT (BAC)

- 1. Breath analysis (Code of Virginia 18.2-268.2)
 - a. Breath analysis will be performed:
 - 1) at the Blue Ridge Regional Jail or another available location equipped to perform a breath test,
 - 2) utilizing equipment and procedures in accordance with regulations published by the Division of Forensic Science, and
 - 3) by an officer holding a valid license to perform such analysis, as issued by the Division of Forensic Science.
 - b. The arresting officer will accompany the arrestee while the breath analysis is performed.
 - c. On completion of the breath analysis, the officer performing the analysis will allow the arrestee to view the result.
 - d. The officer performing the breath analysis will also complete a *Certificate of Breath Alcohol Analysis*.
 - e. Should the result be .08 or greater, the arresting officer will serve the arrestee with a *Notice of Administrative Suspension of Driver's License* in accordance with Code of Virginia 46.2-391.2.
 - f. The officer will submit an *Acknowledgement/Declaration of Refusal-Breath/Blood Test* (State form) to the Magistrate once the test is completed.
 - g. Should an arrestee be vomiting or bleeding from the mouth, breath analysis will not be made available and he/she will be required to submit will be required to submit to a blood test.

2. Blood analysis (Code of Virginia 18.2-268.5)
 - a. Blood samples for analysis of alcohol content will be drawn by those designated by order of the Lynchburg Circuit Court, typically:
 - 1) at Lynchburg General Hospital or other approved medical facility, and
 - 2) by a physician, registered nurse, licensed practical nurse, phlebotomist, or graduate laboratory technician.
 - b. Arrestee transport, restraint, and monitoring at the medical facility will follow procedures outlined in PD-2004: *Prisoner Transport*.
 - c. The officer will obtain and supply the medical personnel with two blood sample vials provided by the Division of Forensic Science.
 - d. The arresting officer will accompany the arrestee during the withdrawal of the blood sample, and will:
 - 1) witness the withdrawal of the blood sample,
 - 2) ensure no alcohol-based agent are used to cleanse the withdrawal site (Code of Virginia 18.2-268,d),
 - 3) witness the transfer of the blood sample into the two vials provided by the Division of Forensic Science,
 - 4) witness that the person drawing the blood sample:
 - a) properly fills out the vial labels, and
 - b) properly seals the vials.
 - e. The officer will take custody of the sealed vials and initial the seals.
 - f. The officer will complete the Virginia Department of Forensic Science DUI/D Submission Information Sheet that is located in the blood vial kit.
 - g. The officer will complete a *Request for Laboratory Examination* (state form) to accompany the Department of Forensic Science sample.
 - 1) In the space provided for *Brief Statement of Fact and Examinations Requested*, the officer will indicate:
 - a) any observations or information leading him/her to believe that the vehicle operator was under the influence of drugs, and/or

- b) any specific drug(s) he/she has reason to suspect, and/or
- c) the results of a PBT and/or Intoxilyzer results.
- h. Both vials and all attachments will be entered into our evidence system on a property/evidence voucher. The Property and Evidence Coordinator will be responsible for mailing the vials certified mail to the Division of Forensic Science the following business day.
- i. The officer will submit an *Acknowledgement/Declaration of Refusal-Breath/Blood Test* (State form) to the Magistrate once the test is completed. The officer will mark that the suspect has not refused to permit the taking of a breath and/or blood sample.

F. TESTING TO VERIFY USE OF OTHER DRUGS

1. Officers should request drug testing in cases where:
 - a. a vehicle operator's level of observed impairment is not consistent with the results of an evidentiary breath test (.07% BAC or less), and
 - b. there is reason to suspect use of other drugs by the vehicle operator (drug possession, chemical odors or other indications).
2. In cases where the officer determines that drug testing is necessary, he/she will:
 - a. advise the arrestee that:
 - 1) The arrestee may still be required to submit to a breath analysis test in accordance with the provisions of the Implied Consent Law, but
 - 2) since the officer has reason to suspect use of other drugs by the arrestee, should the arrestee's breath analysis result come back less than .08% BAC:
 - a) the officer will utilize the breath test result as further probable cause that the arrestee is under the influence of drugs other than alcohol, and
 - b) the arrestee will be required to submit to a blood test to determine the drug content of his blood.
 - b. oversee the drawing of blood samples in accordance with procedures in III, E, 2 above.
3. Officers will utilize drug test results as corroborative evidence to establish vehicle operation impairment. However, such results alone will not be sufficient to establish presumption of impairment by drugs other than alcohol.

Original Signed

M.L. Jamison, Deputy Chief
Field Operations Bureau

September 20, 2022

Date