



# DUI ENFORCEMENT AND PROCEDURES

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## **I. PURPOSE**

The purpose of this directive is to provide detailed guidance on the methods and procedures to be used in enforcing DUI/DWI laws. The arrest of a person for driving while impaired differs significantly from the handling of other traffic law violations. Included are methods to be employed for (1) detection and arrest of drivers under the influence of alcohol and/or drugs, (2) proper administration of preliminary breath test, (3) procurement and procedures for breath and blood testing, (4) safe transportation of impaired arrestees, (5) incarceration or release to a responsible third party, (6) report and documentation requirements, and (7) disposition of the driver's vehicle.

## **II. FIELD PROCEDURES FOR DUI/DWI CASES**

### **A. Detection and Arrest Decisions**

Officers should be diligent in their efforts to detect drivers operating vehicles while under the influence of alcohol and/or drugs. Officers should rely on their training and experience to determine if an arrest should be made.

Officers will consider the elements of DUI/DWI and gather evidence to show that the subject was the driver of a vehicle, or attempting to drive, while under the influence of alcohol, impaired by alcohol, so far impaired by any drug, any combination of drugs, or a combination of drugs and alcohol, or impaired by a controlled dangerous substance that they could not operate a vehicle safely.

Officers must be observant of the driver's actions and statements that are indicative of alcohol and/or drug impairment. Officers should also be alert to physical evidence suggestive of alcohol or drug use.

Officers should be mindful that some medical conditions can simulate the outward appearance of alcohol and drugs. If there are indications that the driver may be suffering from a medical condition, the officer shall summons medical personnel to assist in an assessment of the driver's condition.

### **B. Use of PBT**

Officers may utilize a Preliminary Breath Testing (PBT) instrument in helping to decide if an arrest will be made. The PBT test may be used only AFTER any field sobriety tests have been given/attempted. The PBT Operator shall advise the driver of their rights in reference to a preliminary breath test utilizing MSP Form 102. If the driver

submits to the PBT test and is NOT charged, then the driver will be notified of the test result and provided a copy of MSP Form 102. If the driver submits to the PBT test and is arrested, the driver MAY NOT be notified of the test result or provided a copy of MSP Form 102 until after the evidentiary test has been refused or administered.

The officer must notify the PBT Operator if the driver submitted to the evidentiary test or not. If an evidentiary test is completed, the officer must notify the PBT Operator of the results of the test. (The PBT Operator shall enter the information into his/her PBT Log, MSP Form 104) The arresting officer shall include the result of, or refusal of, any preliminary breath test in the Alcohol Influence Report.

**C. Disposition of Arrestee's Vehicle**

If the driver stops his/her vehicle in an unsafe or illegal location or the vehicle is impeding traffic, the officer will make provisions to have the vehicle towed in accordance with departmental tow procedures otherwise, the officer will ask the driver if he/she wants the vehicle to be locked and left at the scene, released to a sober passenger with a valid license (if present) or towed at the owner's expense for safekeeping. Officers will attempt to honor the request of the driver whenever possible but cannot leave the vehicle on private property without the property owner's consent.

**D. Transportation of Impaired Arrestees**

1. If the driver meets the criteria specified in in Section "V. RELEASE OF DUI/DWI OFFENDERS", they will be transported to a police station with an operable breath testing instrument where they will be provided the opportunity to take a breath test.

2. If the driver does not meet the criteria specified in in Section "V. RELEASE OF DUI/DWI OFFENDERS", they shall be transported to the Anne Arundel County Central Holding and Processing Center (CHPC) where they will be provided the opportunity to take a breath test, processed by the CHPC, and taken before a court commissioner.

**III. BREATH TESTING FACILITY PROCEDURES**

**A. Legal Representation**

1. A person must, on request, be permitted a reasonable opportunity to communicate with counsel before submitting to a chemical test. Maryland law permits attorneys to administer a breath test to their clients. Such a test does not substitute for the evidentiary test administered by this department. The attorney may not remove the driver from police custody to administer a test. The officer will retain visual custody of the driver during any attorney-administered test.

The introduction of a chemical test device by the attorney is considered "mouth contamination" for evidential testing purposes of the driver. It will then require the driver to wait an additional twenty (20) minutes before an evidential test can be administered. The attorney test may not interfere with the compulsory two (2) hour time limit for a chemical test.

2. If a driver requests counsel prior to the chemical test, the officer will note the time of the request, allow ample use of the telephone to the detained person, and note the number of calls attempted. The officer will not allow this request to interfere with the mandated two (2) hour limit for conducting the department's chemical test, or the four (4) hour limit for a blood test to determine the drug or controlled dangerous substance content of the driver.

3. Miranda rights are not required prior to the administration of a chemical test.

**B. Request for Physician**

1. This section applies to drivers arrested for driving under the influence of alcohol or while impaired.

The person tested is permitted to have a physician of the person's own choosing administer tests in addition to the one administered at the direction of the police officer: and in the event no test is offered or requested by the police officer, the person may request, and the officer shall have administered one or more of the tests provided for in this section (Courts and Judicial Proceedings 10-304). Such examinations will be conducted at the expense of the accused.

2. Officers will only call a physician in the event the driver is unable to do so. In this case, officers will clearly indicate to the doctor that the services are being requested by the driver, who will be solely responsible for any cost incurred. During examinations conducted by private physicians, officers will maintain custody and control of the driver and will scrutinize all procedures used by the physician to ensure the safety of the physician, police personnel, and the general public.

### **C. Required Forms**

The arresting officer is responsible for ensuring that the following are completed and scanned into *their incident report as attachments*/E-FILES. The arresting officer will hold the original forms for court purposes. Supervisors shall not approve the report until all applicable forms have been scanned and electronically attached:

1. **Intoximeter Entry Form (PD Form 1905)** (all drivers)
2. DR-15 - Advise of Rights to Chemical Test (all drivers)
3. DR-15A - Order of Suspension/Temporary License (if applicable)
5. DR-23 - Refusal to Submit to DRE Blood Test (if applicable)
4. PD Form 622 "Notice to Defendant" station release form (if eligible)
5. DR-102 - Commercial Motor Vehicle, Alcohol Test Result (if applicable)
6. DR-103 - Violation of Alcohol Restriction (if applicable)
7. MSP 33 – Breath Test Results (if applicable)
8. Intoximeter test result strip (not required if a breath test is refused and no breath sample is attempted)

## **IV. CHEMICAL TESTING**

### **MARYLAND IMPLIED CONSENT LAW**

Reference: Transportation Article, Section 16-205.1

The Maryland Implied Consent Law states that any person who drives or attempts to drive a motor vehicle in the state of Maryland is considered to have consented to take a chemical test in order to determine the alcohol content, or a test to determine the drug or controlled dangerous substance content of his/her blood should he/she be detained on suspicion of driving or attempting to drive while under the influence of alcohol, impaired by alcohol, so far impaired by any drug, any combination of drugs, or a combination of drugs and alcohol, or impaired by a controlled dangerous substance that they could not operate a vehicle safely.

The Implied Consent Law also applies to all nonresident operators and all unlicensed operators, since they have been considered to *have* given their consent in return for the privilege of operating a motor vehicle on the highways of Maryland.

### **A. Time Limitations for Testing**

For the purpose of a test to determine alcohol concentration, the specimen of blood or breath shall be taken within 2 hours after the person accused is apprehended. For the purpose of a test to determine the drug or controlled dangerous substance content of a person's blood, the specimen of blood shall be taken within 4 hours after the person accused is apprehended. "Apprehension" is defined as when a police officer has reasonable grounds to believe that the person is or has been driving a motor vehicle while under the influence or impaired by alcohol or drugs and the police officer takes action to stop or detain the person.

### **B. Mandatory Chemical Tests**

1. Transportation Article, Section 16-205.1(c) states that a driver is compelled to take a chemical test if he/she is involved in a motor vehicle traffic accident where a police officer has reasonable grounds to believe that he/she:
  - a. has been operating a motor vehicle while under the influence of alcohol, impaired by alcohol, so far impaired by any drug, any combination of drugs, or a combination of drugs and alcohol, or impaired by a controlled dangerous substance that they could not operate a vehicle safely, or is operating a commercial vehicle with any alcohol concentration, AND

- b. the motor vehicle traffic accident results in the death of, or life threatening injury to another person. The determination of the injured person's medical condition is left to the police officer's discretion. The phrase "life threatening injury" is not defined in the law. The officer should seek the opinion of an attending medical professional, such as an emergency medical technician, paramedic, nurse, or doctor, if available. The officer should include the names of any such personnel in the official report of the incident. If the determination is made that the driver caused a death or life threatening injury, the driver should be detained and the process of administering the mandatory chemical test should begin immediately, including getting consent from the driver. Do not await the arrival of Traffic Safety personnel.
2. Officers **MUST READ** the DR-15, Advice of Rights; to any driver subject to a mandatory test under TA 16-205.1 (c), however, this does **NOT** allow the driver to refuse to submit to a mandatory test as required by law.
  3. If the driver refuses to willingly submit to a mandatory chemical test, whether at the District station, CHPC or at the hospital, the officer will contact a member of the Traffic Safety Section. Traffic Safety personnel will obtain a search warrant to collect the driver's blood. The driver will be transported to a local hospital if not already at one. The amount of force an officer can apply to obtain a breath or blood sample is subject to the following guidelines from the State's Attorney:
    - a. Unless the officer or medical personnel exhibit gross negligence, they are not civilly liable for their actions.
    - b. Physical force may be applied, if necessary, to get the sample. The same amount of force that is reasonable to arrest an unarmed person would apply in these cases.
    - c. Officers will not do anything that overtly or intentionally endangers the driver or is physically harmful. However, officers may physically restrain and immobilize the driver while medical personnel extract a blood sample. An officer may hold each limb and the driver may be strapped down if necessary.
    - d. If the driver refuses to provide sufficient breath samples or is otherwise uncooperative and refuses to complete a breath test, then the driver will be transported to the hospital and a blood test will be completed without delay.
  4. Transportation Article, Section 16-205.1(d) states that if a police officer has reasonable grounds to believe that a person has been driving or attempting to drive a motor vehicle while under the influence of alcohol, while impaired by alcohol, while so far impaired by a drug, any combination of drugs, or a combination of one or more drugs and alcohol that a person could not drive a vehicle safely, while impaired by a controlled dangerous substance, or in violation of Transportation Article 16-813, and the police officer determines that the person is unconscious or otherwise incapable of refusing to take a test, the police shall: obtain prompt medical attention of the person; if necessary, arrange for removal of the person to a nearby medical facility; and if a test would not jeopardize the health or well-being of the person, direct a qualified medical person to withdraw blood for a test.

If the driver is transported to BWMC in these cases, the officer will complete a "Forensic Request to Draw Blood" form, provided by the hospital, and present it to the charge nurse.

### **C. Breath Test Procedures**

Whenever a police officer requests a driver to submit to a breath test for alcohol, the officer will:

#### **1. Request Breath Test Operator**

The arresting officer will request a Breath Test Operator to respond to the district station or to the CHPC when a driver is arrested or detained. If available, a Breath Test Operator shall respond to the district station or to the CHPC where the driver is being processed to administer the test or enter the refusal into the Intoximeter Instrument.

#### **2. Complete the *Intoximeter Entry Form (PD 1905)***

**An *Intoximeter Entry Form* must be completed for all drivers when a chemical test is requested. All fields are mandatory.**

- a. If the driver elects to take the breath test, the form will be provided to the Breath Test Operator, so the driver's information can be entered into the Intoximeter Instrument and the Alcohol Testing Program Log (MSP 36B).
- b. If the driver refuses the breath test, the form will be provided to a Breath Test Operator. If no Breath Test Operator is available, the form shall be left in the Intoximeter room blood test/refusal inbox prior to the end of the arresting officer's tour of duty, so the driver's information can be entered into the Alcohol Testing Program Log (MSP 36B) by the next Breath Test Operator utilizing the Intoximeter instrument.

All DUI arrests MUST be entered into the Intoximeter instrument and Alcohol Testing Program Log (MSP 36B). Only currently certified Breath Test Operators are authorized to make entries into the Intoximeter instrument and Alcohol Testing Program Log (MSP 36B).

All entered PD1905 forms will be placed in the *Intoximeter Room Binder* by a certified Breath Test Operator. These forms will be collected by the Chemical Test Program coordinator for statistical purposes.

### 3. Complete the DR-15 Form

The most recent DR-15, will be used whenever an officer requests a person to take a chemical test.

- a. An officer will read the entire DR-15 form to the driver. (If the Spanish side is required, either an interpreter or the MVA website <https://mva.maryland.gov/Pages/police.aspx> may be used to read it.)
- b. Indicate on the DR-15 form whether or not the person agrees to submit to the test.
- c. Have the driver sign the DR-15.
  1. If driver refuses to sign the form, indicate on the "Driver's Signature" line "REFUSED TO SIGN".
  2. If the Spanish side is read, have the driver initial at the bottom of the Spanish side.
- d. Sign and fill in the information on the bottom of the DR-15.
- e. Provide the appropriate copy to the driver.

At the conclusion of reading the DR-15, the Breath Test Operator will administer the breath test following the proper procedures or if the driver refuses the test, then the refusal should be entered into the Intoximeter instrument and Alcohol Testing Program Log (MSP 36B) before the operator leaves the district station.

### 4. Administration of Breath Test

If the driver was transported to a medical facility the chemical test MUST be a test of blood. The driver cannot be transported back to the station and administered a breath test.

The driver's mouth must be visually checked for any foreign objects. The driver has to be observed for the 20-minute period prior to providing the breath samples. Once the driver has agreed to take a breath test, the arresting officer or Breath Test Operator will check the driver's mouth to ensure there are no foreign objects. If any foreign objects are observed, the driver will be directed to remove the object. The arresting officer should document what was in the driver's mouth and the time that it was removed. The arresting officer or Breath Test Operator will maintain custody of the driver until the breath test is administered. The Breath Test Operator is responsible for ensuring that the proper procedures and observation time were completed prior to administering the breath test.

The arresting officer will provide the Breath Test Operator a completed DUI Information Data Sheet and the driver's license, if available. The officer should standby during the breath test administration to ensure the safety of the operator and test subject.

If a breath test is administered at another agency's facility, the arresting officer will provide a copy of the *Intoximeter Entry Form (PD 1905)*, Intoximeter test result strip and Breath Test Result (MSP 33) to a departmental Breath Test Operator, or leave a copy in any district *Blood Tests & Refusal bin*, so the breath test is entered into the Alcohol Testing Program Log (MSP 36B).

**5. Complete the DR-15A Form (if applicable)**

If the driver either:

- 1) refuses the requested chemical test, or
- 2) takes the test with a result of 0.08 BAC or higher, or
- 3) refuses to take a blood test for drug or controlled dangerous substance content when requested by a Drug Recognition Expert:

- a. Fill in all blocks with the proper information; be sure to fill in the date of issuance in the space provided.
- b. Indicate whether the person refused the test, took the test with a result of 0.08 BAC but less than 0.15 BAC, result of 0.15 BAC or more, or refused to take a blood test when requested by a Drug Recognition Expert.
- c. Confiscate the driver's license (Maryland driver's license only). If the driver already has a temporary license, then confiscate the temporary license and follow same procedures as a normal driver's license.
- d. Issue a temporary license for the driver (only for Maryland drivers with valid licenses). If the driver had a temporary license, forward the confiscated temporary license to MVA. If the driver is a non-resident and/or does not have a valid driver's license, then under the "Temporary License" section have the driver sign acknowledging that a temporary license was not authorized. The form will then act as an Order of Suspension notice only.
- e. Complete the "Statement of Reasonable Grounds" for which the driver was detained. This section must be completed and include that the driver was advised of the DR-15 rights and refused a chemical test, took a test with a result of 0.08 BAC or higher (specify result) or refused a blood test when requested by a Drug Recognition Expert. Although a copy of the report can be forwarded to MVA, this section MUST be completed legibly and without abbreviations, as this section will be reviewed by an Administrative Law Judge; it is not sufficient to write "See Attached Report."
- f. Sign the form.
- g. Have the Breath Test Operator complete and sign the certification of a test result of 0.08 BAC or more.
- h. Provide the "Driver's Copy" and the "Hearing Request" copy to the driver.

**6. Mail Forms to MVA**

- a. Attach the confiscated Maryland driver's license to the adhesive strip located on the first copy of the DR-15A.
- b. Seal the following items in the envelope provided, and mail to the MVA:
  1. DR-15 (MVA copy)
  2. DR-15A (MVA Copy)
  3. Confiscated driver's license
  4. A copy of the test result, if applicable
  5. A copy of MSP Form 33 (Official Test Result), if applicable
  6. A copy of the DR-23, DRE Certification Form, if applicable.
- c. On the backside of the envelope, check off the items enclosed and mail immediately. **THE ENVELOPE MUST BE MAILED BY THE OFFICER AT A U.S. POST OFFICE OR MAILBOX BY THE END OF THE OFFICER'S TOUR OF DUTY.**

**7. Breath Test Results**

It is the responsibility of all officers to ensure the safety and welfare of all subjects detained for suspicion of DUI. Officers should remember that some medical conditions or drugs could replicate the appearance of alcohol impairment.

- a. When a driver is suspected of impaired driving, and a Breath Alcohol Test has been administered with a breath alcohol concentration (BAC) of .00 or a BAC of .01-.06 and the level of impairment is inconsistent

with the breath result, a supervisor will be notified. If there are reasonable grounds to believe that the subject is under the influence of drugs or a controlled dangerous substance, then the arresting officer will request a Drug Recognition Expert (DRE) through the Communications Section. The Communications Section will first attempt to notify an on-duty DRE and if none are available, the agency on-call DRE will be notified. The arresting officer should not issue a Miranda Warning prior to consulting with a DRE. The DRE will contact the arresting officer to be briefed on the details of the arrest. If the criteria for a DRE evaluation are met, the DRE will respond to administer a drug evaluation. If an agency DRE is unable to respond, the Communications Section will consult with the Agency DRE Coordinator regarding an outside request for a DRE (ie utilization of the Maryland State Police DRE state-wide paging system). If the driver refuses a DRE Evaluation or a DRE cannot respond, the arresting officer will charge the driving accordingly based upon their observations and probable cause to arrest. The arresting officer will consult a supervisor and they will evaluate the situation regarding the driver's level of impairment and determine the need for medical attention. Should the driver exhibit signs of a medical emergency, such as unconsciousness, the Fire Department will be summonsed immediately. The primary goal will be to ensure the welfare of the driver.

- b. In cases where the chemical test has been administered, and the breath alcohol reading is 0.30 BAC or higher, the accused will be transported immediately to the nearest hospital, unless the accused is being processed by the CHPC (Medical Staff will determine if transport to the hospital is necessary). The arresting officer will advise hospital authorities of the driver's high blood alcohol reading.
- c. A DRE notification is not required when a result below a 0.07 BAC is to be used only for charging the subject with a violation of an alcohol restriction.
  1. If a subject has an alcohol restriction on his/her license and a chemical test results in a BAC of 0.02 to 0.07, a Form DR-103 (Certification of Police Officer – Violation of Alcohol Restriction) shall be completed. The Form should be completed and mailed to MVA in the same manner as the DR-15A.
  2. If a subject is operating a Commercial Motor Vehicle and a chemical test results in a BAC of 0.04 to 0.07, a Form DR-102 (Certification of Police Officer – Commercial Motor Vehicle) shall be completed. The Form should be completed and mailed to MVA in the same manner as the DR-15A.

#### **D. Blood Test Procedures**

A blood test shall be administered instead of a breath test under the following circumstances:

- a. A breath-testing instrument is not available.
- b. Injuries to the defendant require the removal to a medical facility.
- c. A test requested by a Drug Recognition Expert.
- d. A chemical test is mandatory and the driver refuses to cooperate with a Breath Test. In these cases, a search warrant will be obtained to conduct the blood test.

##### **1. Complete the Intoximeter Entry Form (PD 1905)**

An *Intoximeter Entry Form* will be completed for all drivers, when a blood test is requested. A copy of this form will be left in any *Blood Tests & Refusal bin*. All blood test/refusals MUST be entered into the Alcohol Testing Program Log (MSP 36B). Only currently certified Breath Test Operators are authorized to make entries into the Alcohol Testing Program Log (MSP 36B).

##### **2. Administering and Mailing Blood Tests**

- a. Read the DR-15 to the driver, if he/she is conscious. Complete the DR-15, have the driver sign it, and give the driver his/her copy. If the driver is unconscious, then the Implied Consent Law deems that the person is incapable of withdrawing consent and the test can be administered.
- b. Obtain a blood alcohol kit from a district Breath Test Room. Blood Test kits will remain in the Breath Test rooms in each district, not in officers' vehicles, except those officers authorized by the Traffic Safety Section Commander or his/her designee. Check the expiration date on the box and inner specimen tubes before use. The MSP Lab will not test an expired blood kit. (Expired blood kits will be returned to the Traffic Safety Section.)

- c. Transport the driver to a medical facility. Only qualified medical personnel approved and licensed by the State Toxicologist may withdraw the blood. All hospitals in the Baltimore metropolitan area are approved.
- d. The officer must witness the taking of the blood from the driver and is responsible for filling out all forms included with the blood kit. The officer must follow the enclosed directions.
- e. The consent form is to be signed by the driver, if conscious, and a copy will be submitted to Central Records with the final reports.
- f. Complete the blood kit manufacturer's "blood collection report".
- g. Complete the "Arrest Information" and "Medical Personnel Payment Authorization" parts of the MSP Form 34, which is included.
- h. The officer must have the "Qualified Medical Person" sign the MEDICAL PERSONNEL PAYMENT AUTHORIZATION section of the MSP Form 34 and the BLOOD COLLECTION REPORT.
- i. *For cases where the driver is believed to be impaired by drugs, the officer will consult a DRE and complete the "Request for CDS Analysis" form if advised by the DRE.*
- j. The officer must follow the packaging and sealing procedure enclosed with the blood sample. Include the completed MSP Form 34, blood collection report, and consent form with the blood kit.
- k. Make sure that the syringes are properly disposed of while at the medical facility.
- l. The mailing package is pre-addressed and postage is provided. The officer must drop it in the nearest U.S. Postal Service collection box or post office BY THE END OF THE OFFICER'S TOUR OF DUTY. If the blood kit is used in the investigation of a Fatal Accident (Index Code 1906.1), the completed blood kit must be returned to the Traffic Safety Section Investigator immediately after its use.

3. **Blood Test Results**

The Maryland State Police will provide the Traffic Safety Section Chemical Test Program coordinator with the blood test results. Upon receipt of the blood test results, the Chemical Test Program coordinator will forward copies of the blood test results to the States Attorney's Office and to the officer who requested the blood test.

The blood test results will include an Inter-Office Correspondence cover sheet from the Chemical Test Program Coordinator. The officer receiving the results will follow the directions specified on the Inter-Office Correspondence. This includes acknowledging receipt of the blood results by returning a signed copy of the Inter-Office Correspondence cover sheet within the specified time. Officers will also complete a supplement report, including a scanned copy of the blood test results in the E-FILES section, indicating the test results and any charges issued as a result.

If the blood results are related to a previously submitted ACRS report, the affected officer will contact the Central Records Section to open the related ACRS report. The officer will add the BAC results and citation numbers to the ACRS. The officer will then resubmit the ACRS report.

4. **Charging**

Due to the extended turnaround time for the Maryland State Police to process blood kits, officers will wait to charge the driver with any traffic related offenses until the results of the blood test are received. Exceptions may be made in extraordinary cases after consultation with a State's Attorney's Office.

5. **DR-15A Procedures**

- a. If the blood test results are 0.08 BAC or higher, the arresting officer will contact the driver and issue the DR-15A form.
  1. In the block titled "Issue Date," write the date that the DR-15A is completed, not usually the same as the date of arrest or accident.



2. In the block titled “Certification of Test Technician or Analyst”, print the words “Blood Test – See Attached MSP Form #34”.
- b. If it is not practical/possible for the detaining officer to serve the DR-15A on the driver, the detaining officer will:
1. Complete the DR-15A form as listed above with the exception of: “Order of Suspension - Issue Date,” “Surrender of Driver’s License,” “Driver’s Certified Statement” and the “Temporary License” block.
  2. Forward the partially completed DR-15A and a copy to the jurisdiction in the area where the driver may be contacted. The detaining officer should retain a photocopy of the DR-15A.
  3. If the DR-15A has not or cannot be served by another agency, the arresting officer can serve it on the driver at court.

**V. RELEASE OF DUI/DWI OFFENDERS**

A. The driver may be released upon issuance of a written citation and, consequently, not taken to the CHPC for processing and before a commissioner if he or she:

1. Is a Maryland resident; and
2. DUI or DWI is the most serious charge and/or there are no associated charges which require an appearance; and
3. A sober adult will take custody of the driver.
4. The driver and the adult taking custody understands, via PD 622, that he/she having been arrested for a violation of Maryland Vehicle Law 21-902 and that they may not drive a motor vehicle within twelve (12) hours after arrest.

B. If the driver does not meet all the criteria listed in paragraph “A”, he or she must be taken to the CHPC for processing and presented to a District Court commissioner prior to release. For further guidance and processing requirements, see Index Code 2004.

C. The release of the driver to a sober adult upon issuance of a written citation is at the discretion of the arresting officer with approval of a supervisor. Supervisors, in exercising authority and discretion, will consider the best interest of the public.

D. In cases where the accused is to be released to sober adult, and not taken to the CHPC for processing and presented before a court commissioner, the arresting officer will read to the accused the information contained on the PD622 entitled, “Notice to Defendant” while allowing the accused an opportunity to read along if he/she desires. The accused will be asked to sign this form.

E. In cases where the accused is to be released to a sober adult, the driver will be released from custody upon the completion of all appropriate paperwork and turned over to the sober adult. If the sober adult is delayed in responding to the District Station, then the arresting officer will monitor the driver while seated in the District Station lobby while they await their ride.

**VI. COURT PREPARATION**

When presenting a DUI/DWI case in court, the officer shall be prepared to testify to the facts of the case, including:

A. The circumstances that established the probable cause for an arrest, including all details which led the officer to believe the driver was operating or attempting to drive a vehicle while either under the influence of alcohol, impaired by alcohol, so far impaired by any drug, any combination of drugs, or a combination of drugs and alcohol, or impaired by a controlled dangerous substance, that they could not operate a vehicle safely, or is operating a commercial vehicle with any alcohol concentration.

B. The date and time of arrest.

- C. That the offense occurred in Anne Arundel County.
- D. Information on the advisement of the DR-15 rights. Advisement of Miranda warning, if applicable.
- E. In cases where a chemical test is administered, the officer must testify to the type of test, time administered technician's name, and results, if the Breath Test Operator or qualified medical person is not summoned to court.
- F. The officer must bring all related documents to court, including a certified copy of the driver's driving record; chemical test results; copies of all written reports and citations.

#### **VII. ATTENDANCE AT HEARINGS**

Every driver who either refuses a test for alcohol, drugs, or controlled dangerous substance; or takes a test with a result of .08 BAC or higher, has the right to request an MVA hearing. The arresting officer and/or chemical testing instrument operator must attend a MVA hearing after receiving a subpoena to do so.

#### **VIII. ALCOHOL VIOLATION BY PERSONS UNDER 21 YEARS OF AGE**

A. The Maryland Vehicle Law prohibits drivers under the age of 21 with an alcohol concentration of 0.02 BAC or higher from operating a motor vehicle (Transportation Article, 16-113). When a driver under the age of 21 is suspected of operating a motor vehicle after consuming alcoholic beverages, a chemical test will be requested via the DR-15.

If the driver takes a test with a result of 0.02 BAC or higher, the driver may be charged with an alcohol restriction violation, in addition to any other charges. A conviction under this section will result in license suspension. If the driver refuses the test, or takes a test with a result of 0.08 BAC or higher, the license will be confiscated and processed according to DR-15A procedures.

B. If the youth is not charged with DUI/DWI, he or she may be released from custody upon completion of the chemical test and citation. In cases where a driver under age 21 is charged with a DUI/DWI violation and there is a test result of 0.02 or higher, a charge for the alcohol restriction violation should also be made.

#### **IX. REPORT REQUIREMENTS**

##### **A. Elements of Report**

Officers should complete a detailed and concise report to help ensure a successful prosecution. The report should detail how the accused was identified as the driver, operation/condition of the vehicle, driver's appearance and statements, performance on field sobriety tests or why test were not administered, advisement of DR-15 and/or Miranda rights, any preliminary or evidentiary chemical tests that were administered, charges, and disposition of driver/vehicle.

##### **B. When Report Required**

Anytime a subject is advised of the DR-15 rights and a chemical test is requested, a report shall be completed. If the test administered is a blood test, the Alcohol Influence Report should reflect that the test result is pending. If charges are deferred until later, it should be documented in the report the charges are "pending." DRE reports will be submitted as a supplement.

#### **X. DEFENDANTS FOUND NOT GUILTY**

Whenever a case of driving under the influence or driving while impaired results in a verdict of not guilty, an inter-office memo or email will be submitted by the arresting officer to the Traffic Safety Section Chemical Test Program coordinator. This report must contain the reason(s) why the defendant was found "not guilty". *The* Traffic Safety *Section* will use this data to identify procedural problems and to assist in DUI/DWI training and retraining.

#### **XI. REFERENCE SOURCES**

The following sources were utilized to compile this Index Code:

Transportation Article, Section 16-113;  
Transportation Article, Section 16-205.1;  
Transportation Article, Section 16-205.2;  
Transportation Article, Section 21-902;  
Court and Judicial Proceedings, Sections 10-302 to 10-309;

Regulations of the State Toxicologist, Post Mortem Examiners Commission State Of Maryland Regarding Tests of Breath and Blood For Alcohol; and  
Law Enforcement Officer's Guide to MVA Forms

**XII. PROPONENT UNIT:** Traffic Safety Section.

**XIII. CANCELLATION:** This directive cancels Index Code 1905, dated *07-30-20*.