



# DUI/DWI ENFORCEMENT AND PROCEDURES

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## I. POLICY

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 based on evidence available to support charges of DUI/DWI*.

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 *or the driver is otherwise in danger from excessive alcohol, drugs, or other ingested substances*, the officer shall summon medical personnel to assist in an assessment of the driver's condition.

### B. Use of a Preliminary Breath Test (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 Advisement of Rights. If the driver submits to the PBT test and is NOT charged, then the driver *must* 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 the evidentiary test has been refused or administered, and charging documents have been provided to the driver.

The *arresting* officer must notify the PBT Operator if the driver submitted to the evidentiary test or not. If an evidentiary test is completed, the *arresting* officer must notify the PBT Operator of the results of the test.

### C. Disposition of Arrestee's Vehicle

Officers *must* adhere to tow procedures outlined in Index Code 1909.

**D. Transportation of Impaired Arrestees**

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

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

**E. Health and Safety of Drivers Arrested for DUI/DWI**

If, at any time, an officer observes a driver behaving in a manner that is indicative of a medical emergency or unconsciousness, whether or not caused by alcohol or CDS, medical assistance *must* be immediately summonsed.

**III. CHEMICAL TESTING**

**A. 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.

**B. 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.

**C. MANDATORY CHEMICAL TESTS**

1. *Maryland law (TA § 16-205.1(c)) allows police officer to compel drivers to submit to chemical tests under circumstances where the driver is suspected of DUI or DWI under TA § 21-902 AND the driver was involved in a motor vehicle traffic crash which resulted in the death of or life-threatening injury to another person.*

*In determining whether a "life-threatening injury" has occurred, officers should seek the opinion of attending medical professionals such as an emergency medical technician, paramedic, nurse, or doctor, if available. The officer should identify the medical professional(s) which was consulted in the officer's incident/offense report or supplement.*

2. *In these circumstances where a driver may be compelled to take a chemical test, the driver must be read the DR-15 Advice of Rights but the driver may not refuse to submit to the mandatory test. When a driver is suspected of DUI/DWI in these circumstances, the officer should NOT wait for Traffic Safety personnel before reading the DR-15 to the driver and beginning testing procedures.*
3. *If the driver is not willing to cooperate with the administration of the mandatory test, the officer must contact a member of the Traffic Safety Section. Traffic Safety Section personnel must obtain a search warrant to collect the driver's blood. The driver must be transported to a local hospital if not already at one.*
4. *Officers may use force to restrain a driver for administration of a blood test. All uses of force must be in compliance with Index Code 401: Use of Force.*
5. *If a driver is unconscious or otherwise incapable of refusing to take a mandatory test, the officer must:*
  - a. *obtain prompt medical attention for the person;*
  - b. *if necessary, arrange for transportation of the person to a nearby medical facility; and*
  - c. *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.*

**6. Officers must complete any paperwork required by medical personnel regarding the completion of mandatory blood testing.**

**D. TESTING PROCEDURES**

**1. General Testing Procedures**

a. Officers must fully complete all required forms and distribute copies as required by those forms. As specified below, required forms include:

i. DR-15: The DR-15 form must be read to all conscious drivers suspected of DUI/DWI who are subject to chemical testing (mandatory or implied consent). Officers may use an interpreter or the MVA website <https://mva.maryland.gov/Pages/police.aspx> for appropriate foreign-language administration of the DR-15. Officers may write “refused to sign” if the driver refuses to sign the form. The Implied Consent Law deems that an unconscious driver is incapable of withdrawing consent and a test may be administered. Officers should note the driver was not conscious on the DR-15.

ii. DR-15A: A DR-15A must be completed by the officer and breath test operator, and then issued to the driver if

- (1) the driver suspected of DUI/DWI refuses to submit to a chemical test,
- (2) submits to a test resulting in a .08 BAC or greater, or
- (3) refuses to take a blood test for drug or controlled dangerous substance content when requested by a Drug Recognition Expert.

Upon issuance of a DR-15A, the officer must confiscate the driver’s Maryland driver’s license, if possessed by the driver. ***Non-Maryland licenses may NOT be confiscated.*** Referencing an incident report is NOT allowed in the “Statement of Reasonable Grounds” section.

The DR-15A ***must*** NOT be completed or issued at the time a driver submits to a blood test. Paragraph 3 below explains DR-15A issuance procedures for blood tests.

iii. MSP-33: The MSP-33 form must be filled out by the breath test operator after a breath test.

iv. MSP-102: The MSP 102 form must be used and filled out when a Preliminary Breath Test is requested of a driver.

v. DR-23: A DRE Certification form must be filled out by a DRE if a DRE exam is conducted.

vi. PD 1905: The PD 1905 Intoximeter Entry form must be completed for all drivers whenever a chemical test is requested. The completed form must be provided to the Breath Test Operator prior to administration of the breath test. If no department Breath Test Operator is available, the form must be left in a test refusal inbox located with a department breath test instrument prior to the end of the officer’s work day.

vii. PD 622: The PD 622 ***must*** be read and issued to all drivers charged with DWI/DUI offenses.

viii. DR-103: The DR-103 (Certification of Police Officer - Violation of Alcohol Restriction) must be completed when a driver has an alcohol restriction on the driver’s license and a chemical test resulted in a BAC of .02 to .07.

ix. DR-102: The DR-102 (Certification of Police Officer - Commercial Motor Vehicle) must be completed when a driver was operating a Commercial Motor Vehicle and a chemical test resulted in a BAC of .02 to .07.

b. All applicable forms must be submitted to the MVA by mailing the forms at a U.S. Post Office by the end of the officer’s work day. The envelope must contain:

- i. DR-15
- ii. DR-15A (if applicable)
- iii. copy of the breath test results (if test was taken)
- iv. MSP-33 (if a chemical test was taken)
- v. DR-23 (if DRE exam was administered)
- vi. DR-102 (if applicable)
- vii. DR-103 (if applicable)

viii. Confiscated Maryland Driver's License (if applicable)

## 2. Breath Test Procedures

- a. Drivers suspected of DUI/DWI who are transported to a hospital for medical treatment may not be returned to a district station or CPHC for a breath test. Officers should follow blood test procedures.
- b. For at least 20 minutes before the breath test, the arresting officer must assure that there are no foreign objects in the driver's mouth. Any objects found in the driver's mouth must be removed and documented in the incident/offense report.
- c. Breath tests *must* be administered at the district station or CHPC where the driver is being processed by the arresting officer.
- d. In cases where a breath test indicates a result of .30 BAC or greater, the driver *must* either be transported to the nearest hospital or, if the driver is being processed at the CPHC, medical staff will be summonsed to evaluate the driver.
- e. 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 test result, a supervisor *must* 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 *must* follow the DRE Procedures below.
- f. DRE Procedures:
  - i. Officers and supervisors must continually evaluate the need to provide the driver with medical attention.
  - ii. Officers should not issue Miranda warnings prior to consultation with a DRE.
  - iii. Upon determination that the driver's BAC is inconsistent with the breath test result, the arresting officer *must* request a DRE through the Communications Section.
  - iv. The Communications Section *must* attempt to locate an on-duty department DRE. If none are available, the Communications Section *must* attempt to contact the on-call DRE. If contact with the on-call DRE is unable to be made, the Communications Section *must* contact the Agency DRE Coordinator to assist with locating an allied-agency DRE.
  - v. The arresting officer *must* brief the DRE and the DRE will determine if a DRE Evaluation will be conducted.
  - vi. If no DRE can be located or the DRE will not be conducting an evaluation, the arresting officer *should* charge the driver based upon the information available to the officer.
  - vii. If a DRE Evaluation is to be conducted, the arresting officer *should* follow the instruction of the DRE conducting the evaluation.

## 3. Blood Test Procedures

- a. A blood test shall be administered instead of a breath test under the following circumstances:
  - i. Breath-testing equipment is not available.
  - ii. Injuries to the defendant require the removal to a medical facility.
  - iii. A test requested by a Drug Recognition Expert.
  - iv. A chemical test is mandatory and the driver refuses to cooperate with a Breath Test. In these cases, a search warrant *must* be obtained to conduct the blood test.
- b. Procedure for Blood Testing:
  - i. Obtain a blood alcohol kit from a district Breath Test Room. Blood Test kits *must* 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.)
  - ii. Present the driver to a qualified medical person to draw the blood.
  - iii. 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.

- iv. The consent form is to be signed by the driver, if conscious, and a copy **must** be submitted to Central Records with the final reports.
- v. Complete the blood kit manufacturer's "blood collection report".
- vi. Complete the "Arrest Information" and "Medical Personnel Payment Authorization" parts of the MSP Form 34, which is included.
- vii. 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.
- viii. For cases where the driver is believed to be impaired by drugs, the officer **should** consult a DRE and complete the "Request for CDS Analysis" form if advised by the DRE.
- ix. 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.
- x. Make sure that the syringes are properly disposed of while at the medical facility.
- xi. **Submit the blood kit to the Property Management Section in accordance with current evidence submission procedures.** If the blood kit is used in the investigation of a Fatal Crash (Index Code 1906.1), the completed blood kit must be returned to the Traffic Safety Section Investigator immediately after its use.

**c. 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 **must** 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 either an Alcohol Case Status Form or CDS Case Status Form from the Chemical Test Program Coordinator. The officer receiving the results shall follow the directions specified on the form. **Officers must complete required reporting under this policy.**

- d. **Charging:** Officers shall 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 only after consultation with a State's Attorney's Office.
- e. **DR-15A Issuance Procedures:** If the blood test results are .08 BAC or greater, the arresting officer **must** contact the driver and issue the DR-15A form, ensuring that "Issue Date" is listed as the date of issuance, not the date of incident. Under "Certification Test Technician or Analyst" the arresting officer should enter "Blood Test – See Attached MSP Form #34." If the officer is unable to locate the driver, the form must be served on the defendant's court date.

**E. RIGHTS OF DRIVERS ARRESTED FOR DUI/DWI**

**1. Miranda**

**Administration of Miranda Rights is NOT required for administration of chemical testing.**

**2. Legal Representation**

A person **suspected of DUI/DWI** 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 attorney **must** be searched prior to entering a secured area. The officer **must** 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. After an attorney-administered breath test, officers must wait an additional twenty (20) minutes before an evidential test can be administered. The attorney-administered test may not interfere with the compulsory two (2) hour time limit for a chemical test.

If a driver requests counsel prior to the chemical test, the officer **must** 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 may 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. Request for Physician**

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. Such examinations will be conducted at the expense of the accused.

Officers *may* only call a physician in the event the driver is unable to do so. In this case, officers *must* 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 *must* maintain custody and control of the driver and scrutinize all procedures used by the physician to ensure the safety of the physician, police personnel, and the general public. *All physicians must be searched prior to entering a secured area.*

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

The Maryland Vehicle Law prohibits drivers under the age of 21 with an alcohol concentration of 0.02 BAC or greater 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 *should* be requested *consistent with this policy*.

If the driver takes a chemical test with a result of .02 BAC or greater, the driver should be charged with an alcohol restriction violation, in addition to any other charges. *Upon charging, Form DR-103 must be completed and submitted as described above. A DR-15A may not be issued for chemical test results .07 or lower.*

### **V. ALCOHOL VIOLATION BY PERSONS OPERATING A COMMERCIAL MOTOR VEHICLE**

*The Maryland Vehicle law prohibits drivers operating Commercial Motor Vehicles with an alcohol concentration of .04 BAC or greater (Transportation Article § 16-813(a). When a driver under the age of 21 is suspected of operating a Commercial Motor Vehicle after consuming alcoholic beverages, a chemical test should be requested consistent with this policy.*

*If the driver takes a chemical test with a result of .04 BAC or greater, the driver should be charged with an alcohol restriction violation under § 16-813(a). Upon charging, Form DR-102 must be completed and submitted as described above. A DR-15A may not be issued for chemical test results .07 or lower.*

### **VI. RELEASE OF DUI/DWI OFFENDERS**

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

If the driver does not meet all the criteria above, he/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.

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, *should* consider the best interest of the public.

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 *must* 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 *must* be asked to sign this form.

In cases where the accused is to be released to a sober adult, the driver *must* 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 *must* monitor the driver while seated in the District Station lobby while they await their ride.

## VII. ATTENDANCE AT COURT AND HEARINGS

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 **must** 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”.

***Officers who receive subpoenas to administrative (MVA) hearings must attend those hearings as summonsed. Such subpoenas must be treated as equivalent to a court subpoena for all purposes.***

## VIII. REPORT REQUIREMENTS

Any time a subject is either arrested or otherwise subjected to chemical testing procedures, an incident/offense report is required. ***Results of any PBT administration must be included in the incident/offense report.***

Upon receiving blood test results, Officers **must** complete a supplement to the initial incident/offense report and include any information related to charging and a copy of all paperwork received related to the blood test results. If the incident involved a motor vehicle crash, the related crash report must be updated to add BAC and charging information.

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

**X. CANCELLATION:** This directive cancels Index Code 1905, dated ***03-27-23***.