



## Driving Under Influence of Alcohol or Drugs

### .01 Policy

Identifying and stopping motorists that are operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs (DUI) is a priority for officers.

Arrests for DUI shall be based on probable cause that, at the time of the offense, an arrestee was in actual physical control of a vehicle. Probable cause shall be developed by observation and/ or witness account.

### .02 Terms

D.U.I.: Driving Under the Influence, a blood alcohol concentration of 0.08% or higher.

D.W.I.: Driving While Impaired, a blood alcohol concentration of 0.06%, but less than 0.08%.

### .03 Governing Legislation and Reference

Governing Legislation:

Maryland Transportation Article, §21- 902 and §26-202.

Maryland Transportation Article, §16-205.1.

*Delaware v. Prouse* (440 U.S. 648,99 S.Ct.1391).

*Little v. Maryland & Odom v. Maryland* (300 Md. 485,479 A.2d 903).

*Michigan Department of State Police v. Sitz* (496 U.S. 444, 110 S.Ct. 2481).

*Indianapolis v. Edmond* (53 1 U.S. 32, 121 S.Ct. 447).

Reference:

Administrative Per Se in Maryland, a Police Officer's Guide to Forms and Procedures

"Checkpoint Strike force" Maryland State Police Sobriety Checkpoint Case Law, March 2004.

Forms:

Maryland Uniform Complaint and Citation (MVA Form DR-49).

Alcohol/Drug Influence Form (PGC Form 6711).

Advice of Rights (MVA DR- 15).

Officer's Certification and Order of Suspension (MVA DR-15A).

Preliminary Breath Test Advice of Rights (MSP Form 102).

Result of Test for Alcohol Concentration (MSP Form 33).

Statement of Probable Cause Arrest on Traffic Charges, (Form DC/CR1).

Log of Tests for Alcohol Influence Arrests (MSP Form 36B).

### .04 Procedure

When preparing to stop a motor vehicle, officers shall consider the following:

- A stop location that maximizes the safety of the officer and the violator Positioning the police vehicle in such a manner that alerts other motorists of the officer's presence.

- A suitable area where roadside sobriety tests can be administered.

#### A. DUI Traffic Checkpoints

A trained member shall be the DUI Checkpoint Manager. He or she shall be responsible for ensuring that checkpoint operations are safe for the public and officers. The Operations Commander shall be contacted by a Supervisor to schedule a checkpoint.

#### Checkpoint Locations

The checkpoint manager shall select the checkpoint location. Site selection shall be based on:

- Public and officer safety;
- Minimizing inconvenience to motorists and unnecessary delays to traffic; and,
- Providing sufficient space to deploy officers and marked police vehicles in plain sight Allowing the placement of warning signs.

Statistical data shall be used to determine a site location. Data may include, but is not limited to, calls for service, citizen complaints, and accident reports.

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Before conducting a traffic checkpoint on private property such as apartment parking lots, shopping center parking lots and driveways, written permission will be obtained from the property owner or authorized agent.

### Authorization to Initiate Checkpoints

Checkpoints may be initiated only upon the written approval of the Chief of Police. Requests shall be made on an inter-office memorandum via the chain of command and include the following information:

- Purpose of checkpoint;
- Location of checkpoint; and,
- Date and time of checkpoint.

Before initiating a checkpoint, the checkpoint manager shall notify the following of the date, time, and location site:

- Operations Commander;
- Communications; and,
- MSP barrack servicing the area (for traffic-related checkpoints).

### Legal Considerations

Traffic checkpoints must be conducted in strict compliance with legal guidelines. The checkpoint manager shall ensure the following:

- An official sign will be placed to give motorists adequate warning that a checkpoint is ahead and the opportunity to choose an alternate route;
- All official signs used at checkpoints must have the prior approval of the Operations Commander;
- Officers manning checkpoints shall be in uniform;
- At least one marked police cruiser will be used at each stop location;
- All vehicles will be stopped. If traffic becomes congested, the checkpoint manager may temporarily suspend the operation until the congestion is relieved;
- Motorists who do not wish to stop shall be allowed to make a legal U-turn prior to the checkpoint and follow a different route; and,
- Officers will not search vehicles, nor interrogate drivers or passengers unless probable cause exists to search the vehicle, or an arrest is made.

### Initial Stop and Contact

The initial stop and contact shall last approximately one minute or less. Officers conducting the initial stop and contact shall:

- Identify themselves;
- State the reason for the stop;
- Tell the motorist that all motorists are being stopped; and,
- Thank the driver for his cooperation.

If an officer develops probable cause to believe that the motorist is driving while under the influence of alcohol, the officer shall direct the motorist to a location designated for vehicles that are to be detained, and pursue the matter for a 'reasonable' time. If the motorist refuses to cooperate, the motorist may be detained and the officer may investigate further.

If the officer does not develop probable cause during the initial contact, the motorist will be instructed to proceed.

### Arrest Procedures

Persons arrested at checkpoints will be transported and processed in accordance with established procedures,

### After Action Report

The checkpoint manager will ensure that a Case Report is completed at the conclusion of the operation. Copies of the report will be forwarded to the Chief of Police, and the Operations Commander. The report shall include, but not be limited to the following:

- Purpose, date, time, and location of the checkpoint
- Number of vehicles stopped;
- Number of arrests made; and,
- Description of charges made.

### B. Sobriety Tests

Individuals suspected of DUI shall be requested to perform roadside sobriety tests, unless they are physically unable. If possible, tests should be administered in a well-lighted and level area. Prior to administering any tests, officers will briefly explain and demonstrate them.

When attempting to determine impairment, only officers trained to administer the Standardized Field Sobriety Tests (SFST) will

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attempt to administer them and shall follow all procedures and scoring criteria established by the National Highway Traffic Safety Administration (NHTSA) when doing so. The SFST include:

- Horizontal Gaze Nystagmus (HGN);
- Walk and Turn; and,
- One Leg Stand.

An officer not SFST-trained, shall not attempt to administer the tests listed above, but may attempt to administer the tests listed below, which include, at a minimum:

- Walk and Turn Test: With the left foot on a line, place the right foot in front of it with the right heel touching the left toe; walk nine steps down the line in heel to toe fashion, turn, and take nine steps back in the same manner; and
- One-Leg Stand Test: Stand with heels together and arms at sides, raise one leg approximately six inches off the ground and hold that position for 30 seconds while counting aloud one-thousand-one, one-thousand-two, one-thousand-three, continuing until one-thousand-thirty.

### C. Preliminary Breath Test (PBT)

A PBT may be used to develop additional probable cause to detain an individual. The PBT does not replace conventional roadside sobriety tests or chemical tests.

Only officers that have been trained and approved by the State Toxicologist shall administer a PBT.

A PBT may be administered after an operator has been advised of the rights outlined in the Preliminary Breath Test Advice of Rights form. The operator does not have the right to speak with an attorney before deciding whether to submit to a PBT. PBT results may not be used as evidence, but the results should be included in the reasonable grounds section of the DR-15A form.

The use of PBTs shall conform to the regulations of the State Toxicologist. PBT operators shall record PBT test results in the State of Maryland Preliminary Breath Test Log.

A PBT may be used to test any principal of a crime that is suspected to be under the influence of alcohol.

### D. Advice of Rights, DR-15 (Transportation Article, Section 16-20.5.1)

Officers will ask arrestees to submit to a chemical test to detect alcohol concentration for the following offenses:

- DUI Impaired Driving;
- Driving in violation of an alcohol restriction (including the restriction of persons under the age of 21 ); or,
- Driving in violation of Maryland Transportation Article, Section 16-8 13 (commercial motor vehicle).

Officers shall follow these procedures for violations not involving the death of another:

- Read the DR-15 Advice of Rights to the arrestee, comply with the instructions at the bottom of the form, and complete applicable blocks;
- Distribute copies to persons named at the bottom of the form's pages;
- Complete the officer's Certification and Order of Suspension when appropriate;
- The grounds for stopping the vehicle must be comprehensive and observations such as vehicular actions, locations observed, and the condition of the operator must be included;
- "Alcoholic Beverage" is the only phrase permitted to describe the odor of a fermented liquid in the narrative of the reasonable grounds section;
- In addition, the fact that the person listed on the form was operating the vehicle and had an odor of an alcoholic beverage on their breath must be indicated; and,
- In the reasonable grounds section, describe the circumstances that led to the submission or refusal of a chemical test.

For violations where death occurs, officers shall:

- Inform the arrestee that by law, they must submit to a chemical test and read the arrestee the DR-15 Advice of Rights form. Officers must be able to articulate that there is reasonable suspicion to believe that alcohol is present; and,
- Not advise the arrestee of Miranda rights unless questioning the arrestee, or as instructed by the Office of the State's

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Attorney.

### E. Documentation

The following documents are required for all DUI arrests:

- Alcohol/ Drug Influence Form;
- Advice Of Rights - required in all non-fatal accident cases;
- Officer's Certification and Order of Suspension- required only when the test result is 08% or higher or the arrestee refuses to submit to a test - and is used to:
  - Confiscate a Maryland Driver's License;
  - Issue a temporary license;
  - Order a suspension;
  - Request a driver's hearing;
  - Record the officer's statement of reasonable grounds;
  - Record results of a test for alcohol concentration; and,
  - Provide evidence of refusal.
- State of Maryland Preliminary Breath Test Log- required for all PBT tests; and,
- State of Maryland Alcohol Program Testing Log- required for all alcohol or drug-driving arrests.

If an arrestee submits to a breath test, the Breath Testing Operator will log the arrest. If an arrestee is not given a breath test, the arresting officer shall compile copies of all citations, reports, and MVA Forms listed on the DWI checklist before clearing the incident. The arresting officer shall submit the copies to the Office of the State's Attorney, DWI Coordinator.

### F. Chemical Tests

#### Administration of Chemical Tests

Generally, the chemical test administered shall be the breath test, except that blood tests shall be administered if the:

- Arrestee is unconscious or incapable of refusing a chemical test;
- Arrestee's injuries require their removal to a medical care facility; or,
- Equipment to administer a breath test is unavailable.

The breath or blood specimen shall be taken-within two hours following the time the arrestee was apprehended. Circumstances may complicate the consent procedures. An arrestee may:

- Repeatedly change their mind about submitting to a chemical test;
- Submit to a chemical test only after conferring with an attorney. Officers shall allow the arrestee a reasonable period of time to contact and consult with an attorney;
- Officers shall advise arrestees that failure to take a chemical test due to evasive behavior or inability to contact an attorney will be treated as a refusal; and,
- If the two-hour time limit passes without a chemical test being administered, the officer shall document a test refusal.

#### Breath Testing

An officer requesting a breath test for an arrestee shall:

- Request a breath testing operator after the arrestee has agreed to take a chemical test;
- Observe the arrestee for 20 minutes before the test, ensuring that the arrestee does not smoke or ingest any substances until the test is completed; and,
- Officers shall not administer breath tests to their own arrestees.

When the Result of Test for Alcohol Concentration is completed, the Breath test operator shall provide the arrestee with a copy of the results. The arresting officer shall retain the original.

#### Test Refusal or Test Result of .08% or Higher

The officer shall:

- Confiscate the Maryland driver's license;
- Within 72 hours, send the confiscated driver's license, copies of MVA forms, and any Results of Test for Alcohol Concentration to the MVA;
- Complete the Officer's Certification and give a copy to the arrestee;
- Advise the arrestee that he or she has 10 days in which to mail the hearing request form to request a hearing to show cause

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why their license should not be suspended;  
and,

- Give the arrestee the "Driver's Copy" of the Officer's Certification and Order of Suspension to use as a temporary driver's license, provided the arrestee has a valid Maryland Driver's License and signs the Officer's Certification and Order of Suspension.

An arrestee already in possession of a temporary license is treated the same as if he or she had a regular license.

### Blood Testing

Prior to having medical personnel draw blood utilizing the two test tubes found in the State Toxicologist-approved blood collection kit, the arresting officer should ensure that the kit's expiration date, usually found on the front of the kit, is still current. The kit contains directions, which shall be followed.

A physician, nurse, or person who withdraws blood in the course of their duties in the emergency room shall utilize the contents of the kit.

The arresting officer (in their absence another officer) shall:

- Witness the withdrawal of blood;
- Ensure the test tubes are filled completely;
- Immediately after the blood is collected, mix the blood with the anticoagulant powder by slowly and completely inverting the test tube five times (Do not shake vigorously);
- Complete the four evidence seals contained in the kit;
- Seal each of the test tubes with an evidence seal; and,
- Place the sealed test tubes in the original box and seal the ends of the box.

Officers shall not have blood samples drawn by military personnel.

Officers shall avoid having blood samples drawn within the District of Columbia, as these may be inadmissible as evidence.

As test results are not immediately available, officers will place the appropriate charges against arrestees based upon known facts.

### Submitting Blood Tests

Blood specimens must be forwarded to MSP for analysis and must be accompanied by the Alcohol Analysis-Medical Personnel Payment Authorization. The arresting officer shall ensure that the form includes the signature and Social Security Number of the person withdrawing the blood, and the hospital address. They shall retain the arresting officer's copy, and immediately transmit the following to the Chemical Test for Alcohol Unit (CTAU), MSP, Pikesville, MD 21208:

- Copies #1 through #4 of the MSP Form #34; and,
- Blood test kit. Do not place kit in an outdoor mailbox during freezing weather.

For test results .06% or below, the arresting officer shall:

- Fill in the test result that was left blank on the Log of Tests for Alcohol Influence Arrests;
- Complete the three copies of the Result of Test For Alcohol Concentration form; and,
- Immediately forward defendant copy of Result of Test For Alcohol Concentration to the arrestee via Certified U.S. Mail, restricted delivery. U.S. Postal Service Form 3800 and 3811 shall be affixed to the mailer per instructions on these forms, available from the Records Custodian.

On an arrestee's receipt of the Result of Test for Alcohol Concentration, the Postal Service returns PS Form #3811, bearing the arrestee's signature, to the arresting officer, the officer retains this form as evidence. If the Postal Service is unable to serve the certified letter, the form will be returned to the arresting officer stamped as such; the officer retains this form as evidence; and,

- Immediately forward the Office of the State's Attorney's copy of the Result of Test For Alcohol Concentration and other required documentation, via courier, to the DWI Case Coordinator, Office of the State's Attorney, District Court Division Courthouse, Upper Marlboro, MD.

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For test results .08% or higher, the arresting officer shall:

- Complete the DR-1 SA, except for the following:
  - Order of Suspension-issue date;
  - Surrender of the Drivers License;
  - Drivers Certified Statement;
  - Temporary License Block; and,
- Submit the DR-15A and the MVA copy of the Result of Test For Alcohol Concentration form to the MVA.

### G. Persons Incapable of Refusing a Chemical Test

If an officer has reasonable grounds to believe that an arrestee has been driving or attempting to drive while under the influence of alcohol or while impaired and determines the arrestee is unconscious or incapable of refusing to take a test, the officer shall:

- Arrange for the arrestee to be transported to a hospital; and,
- If a test would not jeopardize the health of the arrestee, direct a qualified medical person to collect a blood sample with an authorized blood collection kit.

If the arrestee regains consciousness, or otherwise becomes capable of refusing the administration of a chemical test before it is administered, officers will follow the established procedures for obtaining consent.

### H. Processing Drug Suspects

Persons suspected of driving while under the influence of drugs are processed in the same manner as persons driving under the influence of alcohol.

If the arrestee submits to a chemical test, the test can be used to determine the extent of alcohol influence. A low test result, especially a result of 0.0%, together with the officer's observations, may support the probability of drug use.

An officer shall not confiscate an arrestee's driver's license for driving under the influence of drugs, unless the officer is a certified Drug Recognition Expert (DRE). DRE is an officer specially trained to detect drivers under the influence of illegal drugs, prescription and over-the-counter medications, and inhaled products.

Drugs found on the arrestee or in their vehicle shall be submitted to a laboratory for analysis by the arresting officer. The results of the analysis may be used as corroborative evidence.

If the arrestee was injured and transported to a hospital, the arresting officer shall request the Office of the State's Attorney to subpoena the hospital's blood test results.

Taking prescription medication is no defense against a charge of driving while under the influence of drugs.

### I. Disposition of Arrestee

The officer may release an arrestee, providing the arrestee signs all citations and MVA forms. Otherwise, they shall be presented, without unnecessary delay, before a District Court Commissioner. If the officer releases the arrestee, they shall take reasonable steps to ensure the arrestee has transportation away from the police facility.

Arresting officers shall consult with the Office of the State's Attorney, Criminal Trials Division, before placing charges against an arrestee involved in a fatal accident.

### J. Summoning Witnesses

Arresting officers shall subpoena essential witnesses by checking the witness block and completing the back of the #1 copy of the citation. If additional space is necessary, a Request for Witness Summons will be completed.

Essential witnesses include the following:

- Officers who had custody of the arrestee
- Witnesses who observed the arrestee driving; and,
- Individual that withdrew blood from the arrestee.

The Office of the State's Attorney transmits subpoenas for breath testing operators and chemists analyzing blood samples.

### K. Case Disposition

The arresting officer shall note the court disposition of the case in the State of Maryland Alcohol Program Testing Log within 72 hours of adjudication.

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### Disposition of Alcohol Chemical Test

In cases where a blood test was given, the arresting officer shall complete the Disposition of Alcohol Chemical Test when the court case and appellate process are concluded to facilitate the disposal of blood samples.

#### L. License Restrictions

(Transportation Article. Section 16-1 13)

Persons suspected of driving in violation of an alcohol restriction are processed similarly to persons driving under the influence of alcohol. Instead of using the Officer's Certification and Order of Suspension, if a person consents to a breath test, officers shall use a:

- Certificate of Police Officer, Violation of Alcohol Restriction; and,
- Certificate of Police Officer, Test Results of 0.04 or More, Commercial Motor Vehicle.

Alcohol restrictions on a Maryland Drivers License may take the following forms:

- Licensees less than 2 1 years of age are prohibited from having a BAC of 0.02 or greater; and,
- Licensees with a designated alcohol restriction are prohibited from having any alcohol in their blood.

Arrests for either of these violations are handled in the same manner as a DWI violation including chemical testing and charging of the arrestee. Officers shall complete and submit the Certification of Police Officer, Violation of Alcohol Restriction, as the MVA documentation needed after an arrestee submits to a chemical test. Chemical test refusal shall be handled as a regular refusal to submit to a chemical test.

#### M. Commercial Driver's License

Commercial drivers (when exercising their privilege as commercial licensees) are prohibited from having any alcohol in their system. Officers who encounter any commercial driver with the odor of an alcoholic beverage on their breath, shall request the driver to submit to a chemical breath test. DWI regulations concerning chemical testing and charging apply in these types of arrest. The officer shall complete and submit the Certification of Police Officer, Test Result of 0.04% or More, Commercial Motor Vehicle for MVA documentation.

When a commercial driver has any alcohol concentration in their system, or refuse the breath test, the officer shall advise them that they cannot drive a commercial vehicle for at least 24 hours.

#### N. All Other Traffic Violation Arrests

In addition to DUI arrests, all other traffic arrests will be made pursuant to the provisions of Section 26-202 of the Maryland Transportation Article. For example, an officer may arrest without a warrant a motorist operating a vehicle on a canceled, suspended, refused, or revoked license in violation of Section 16-303, due to a failure of the motorist to appear for court.

The Officer needs to complete the traffic citations and a Statement of Probable Cause Arrest on Traffic Charges, form DC/CR11, when the violator is to be presented before a District Court Commissioner.

When making a traffic arrest, officers will use only the force necessary to accomplish lawful objectives.

If an arrest is made with a citation, the issued case number will be placed in the right margin of the citation. Witness information is placed on the reverse of the court copy.

Citations will be submitted to a supervisor for review before going off-duty.

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HISTORY: Adopted December 1, 2013

This General Order supersedes all other orders and memoranda in conflict therewith.

Authority:

A handwritten signature in black ink, appearing to read "Charles L. Owens". The signature is written in a cursive style with large, looping letters.

Charles L. Owens  
Chief of Police