



# TRAFFIC OFFENSES INVOLVING ALCOHOL/DRUGS

FC No: 515

Date: 07-18-02

## Contents:

- I. Policy
- II. Arrest Procedures
- III. Processing the Defendant
- IV. Chemical Tests for Alcohol
- V. Chemical Tests for Drugs/Drug Recognition Experts
- VI. Unconscious Persons
- VII. Drivers Involved In Fatal/Life Threatening Injury Collisions
- VIII. Deceased Persons
- IX. DWI Log
- X. Notification of Chemical Test Results
- XI. Court Notification for Officers
- XII. Checklist
- XIII. Proponent Unit
- XIV. Cancellation

### ***Appendix A: "Subsequent Offender Addendum"***

#### **I. Policy**

In accordance with the requirements of the Maryland Transportation Article, officers of this department will vigorously enforce the laws regarding driving ***under the influence (DUI) or driving while impaired (DWI)***.

#### **II. Arrest Procedures (CALEA 61.1.5.a, 61.1.11)**

##### **A. Initial Contact**

1. The officer will stop the operator at the earliest possible time after reasonable suspicion has been developed. Consideration for the safety of the officer, violator, and the public should be taken when choosing a location for the stop.
2. If possible, the officer will interview the operator at the scene of the stop, asking how much the operator has had to drink, when the operator started and stopped drinking, if the operator has taken any drugs/medication, etc. The officer should not read Miranda rights to the operator at this point.
3. The officer will ask the operator to perform ***the Standardized Field Sobriety Tests (SFST)*** to establish additional probable cause for arrest.

##### **B. Defendant's Vehicle**

1. When an arrest is made, the arresting officer will search the defendant's vehicle incident to arrest for evidence relating to the ***DUI/DWI*** arrest.
2. ***The officer may move the vehicle, upon receiving permission from the defendant, to a nearby lawful parking area, lock the vehicle and take the keys, or leave it at the scene of the stop if it is in a safe and legal location.***
3. ***The keys may be turned over to a passenger or other sober adult who has an ownership interest in the vehicle (possessing a valid driver's license) or the keys may be retained in a location designated by the district commander until the owner returns in a sober condition.***
4. The final decision regarding whether or not to tow the vehicle rests with the arresting officer.
5. The officer should take reasonable steps to arrange alternative transportation for the passenger(s). A back-up unit may be used since the arresting officer's primary responsibility is processing the defendant within the specified time limit. Factors such as time of day, adverse weather conditions, location of arrest, age, sex, and the physical condition of the passenger(s) should be used as guidelines when weighing the alternatives.

##### **III. Processing the Defendant**

- A. Advising a defendant of the Miranda rights is discretionary, but if Miranda rights are given, it should only be done after the execution of the DR-15 but prior to asking questions from the DUI report concerning amount of alcohol consumed, when it was consumed, etc.
- B. **DR-15, "Advice of Rights to Chemical Test"**  
In **all arrests** for alcohol/drug related violations involving the operation of a motor vehicle, the officer will execute the DR-15 form, "Advice of Rights to Chemical Test."
  1. The officer will fill in all blanks and read the **entire** form to the defendant.

2. The defendant will be given the opportunity to sign the form acknowledging receipt.
  3. If the defendant refuses to sign, the officer will write "refused" in the space designated "Operator's Signature." If the defendant refuses to sign but agrees to take the test, the test will be administered and the officer will write "refused to sign but agreed to take test" in the space designated "Operator's Signature." In both instances, the officer will initial what is written in the "Operator's Signature" space.
  4. The arresting officer will retain the original and give a copy to the defendant. The MVA copy will be forwarded to MVA with the DR-15A (if the DR-15A is utilized).
- C. Article 24 of the Maryland Declaration of Rights requires that a person detained for ***DUI/DWI*** must, on request, be permitted a reasonable opportunity to communicate with an attorney before submitting to a breath test.
1. The arresting officer has no responsibility to affirmatively suggest a detained person contact counsel at this point. If a request is made by the defendant prior to conducting the chemical test, the officer will:
    - a. Note the time of the request.
    - b. Allow ample use of the telephone to the detained person.
    - c. Note number of calls attempted.
    - d. Provide the Public Defender's phone number if the defendant so requests. The Public Defender's Office will only accept calls for routine ***DUI/DWI*** cases during regular working hours. "On-call" Public Defenders will talk with defendants concerning charges of traffic homicide, manslaughter, or alcohol-related death.
  2. The officer will not allow this request to interfere with the mandated two hour time limit for conducting the chemical test. If it appears that notification of counsel will cause the two hour limit to elapse, the officer will advise the detained person of the administrative penalties imposed for exceeding the time limit to take a chemical test. The officer will initiate a DR-15A if the two hour time limit elapses. The two hour time limitation begins at the time of arrest.
- D. If the defendant refuses the test, or takes the test and the results are ***.08%*** or higher, the officer will execute the DR-15A (refer to the Administrative Per Se manual for instructions).
- E. If the defendant shows the officer a valid DR-15A in place of a license, the officer will seize that copy and issue a new DR-15A to the defendant. The officer will include the original seized DR-15A in the envelope to MVA and make a copy for the officer's case file.
  - F. If the officer is issuing a DR-15A as a temporary license and the defendant refuses to sign the form, the officer will write refused on the signature line of the DR-15A. The defendant may sign the defendant's copy of the DR-15A at a later date to validate the temporary license.
  - G. If the defendant agrees to submit to a test, a breath test operator will conduct the breath test unless the circumstances listed in section IV.A are present. An officer will remain with the defendant and the breath test operator during the 20 minute waiting period prior to the test. The officer will not allow the defendant to eat, drink, smoke, or place anything in the defendant's mouth from the time of the arrest until after the chemical test has been administered.
  - H. The officer will complete the DR-102 (12/92), "Certification of Police Officer, Test Result of 0.04 to 0.09, Commercial Motor Vehicle," when the officer detains an operator of a commercial vehicle for violations of Section 16-813 of the Maryland Vehicle Law.
  - I. When an operator of a commercial motor vehicle is to be charged with a violation of TA 16-813, the officer will request, through ECC, that a certified commercial motor vehicle inspector respond to the scene to ***assist with the investigation.***
  - J. The officer will use the DR-103 (3/98), "Certification of Police Officer, Violation of Alcohol Restriction," when an officer arrests:
    1. An individual under 21 years of age for violation of the alcohol restriction.
    2. Any person for a violation of an alcohol restriction on that person's license; however, if the BAC is ***.08%*** or higher, then the DR-15A is completed.
  - K. No prisoner will be allowed access to medicine, even if it is part of the prisoner's property. If a

certified emergency exists, department personnel will notify and request assistance from Montgomery County Fire and Rescue Services (MCFRS) personnel for the decision to administer any medications. If the prisoner is suffering life-threatening conditions (e.g., chest pains, asthma, etc.) and has possession of prescribed medication, an officer will advise MCFRS personnel of its existence, the contents of the label, and the prisoner's symptoms. The officer will follow MCFRS instructions regarding administration of the medicine. Any remaining medication will be turned over to the responding MCFRS personnel. If the prisoner is transported to a medical facility, the test performed will be the blood test. If the prisoner does not require transportation to a medical facility, a second 20 minute observation period will be initiated and the Chemical Test for Alcohol will be administered. This should be done even if the required treatment causes the two hour time limit to elapse. The circumstances of both the refusals and the tests conducted under these circumstances will be evaluated on a case-by-case basis. Refer to FC 811, "Handling, Searching, and Transporting Prisoners," for procedures regarding the transporting of prisoners to health care facilities. (CALEA 71.3.2)

L. When placing charges, officers must remember that as a matter of law, it is the officer's opinion that is important and not necessarily the results of the breath test. Prior to administering the breath test, the officer should have already formed an opinion as to the level of intoxication. Officers have full discretion to charge the defendant with either ***driving under the influence or driving while impaired by alcohol*** regardless of the results of the breath test.

M. The officer will complete the citation(s) in the following manner when charging defendants with violations of the ***DUI/DWI*** laws: (CALEA 61.1.2.b, 61.1.5.a)

1. **Driving Under the Influence**  
***Circle the pre-printed charge on the citation of 21-902(a)(1), "Driving Under the Influence of Alcohol." When the defendant's breath test indicates a result of .08% or more, the officer shall complete a second citation and circle the pre-printed charge of 21-902(a)(2), "Driving Under the Influence of Alcohol Per Se."***

2. **Driving While Impaired by Alcohol** ***Circle the pre-printed charge on the citation 21-902(b), "Driving While Impaired by Alcohol."***
3. When alcohol and drugs are a factor or when driving while under the influence of CDS, consult the DRE for the proper charging citations based on the DRE's evaluation.
4. **Driving in Violation of the Under 21 Alcohol Restriction** - When a Maryland resident under 21 years of age ***is stopped and the officer detects an odor of an alcoholic beverage upon the driver's breath and through observations determines that the driver should be arrested, the DR-15 will be read to the defendant, and the defendant will be given the opportunity to take the Electro Chemical Oxidation and Infrared Absorption (ECIR) test.***
  - a. ***If the results are between .00 to .06 or the subject refuses the test, the officer will issue a citation for T/A 16-113(b), "Driving a Motor Vehicle in Violation of the Under 21 Years Old Alcohol Restriction" and complete the Violation of Alcohol Restriction (DR-103). A test result of .00 at the station does not negate the observations of the officer on the scene. The fine is the same as for TA 16-113(h). A report with a classification of 2815, "Violation of Alcohol Restriction," must be written.***
  - b. ***If the test is .07 or above, the subject will be processed as a DUI/DWI arrest including the DR-15A.***
  - c. Writing in 16-113(b) will automatically be detected by MVA and will trigger a hearing to be set.
  - d. If, in addition to the alcohol restriction violation, any of the violations in sections III.M.1, 2, or 3, above, apply, the additional citations will be issued for the violation(s) that apply and the report classification will be 2812, "Driving Under the Influence."

N. ***If a subject is arrested for DUI/DWI and it is found that the subject has been previously convicted of an alcohol/drug related driving violation, the arresting officer should immediately complete a "Subsequent Offender Addendum" and serve the defendant with the last copy prior to release. Forward the top three copies, along with a copy of the driving***

**history and police report to the State's Attorney's Office (SAO). The fourth copy will remain with the officer's case file.** (CALEA 42.1.5)

- O. In all cases involving alcohol/drug related fatal collisions, the SAO will be notified.
1. Contact will be made by the Collision Reconstruction Unit **investigator**, or designee, as soon as possible.
  2. The results of the State's Attorney contact, including the identity of the attorney, will be noted within the collision report supplement written by the CRU investigator.
  3. The Collision Reconstruction Unit (CRU) **investigator** will confer with the SAO liaison officer to determine the appropriate charges that will be filed.
  4. When charges of homicide by motor vehicle while intoxicated or manslaughter by motor vehicle are placed, the defendant must be taken before a commissioner.
- P. In all non-fatal collisions where the defendant is charged with **DUI/DWI**, **Records Division** will forward a copy of the accident report to the SAO. (CALEA 82.2.5)
- Q. The officer will complete the MCP 106, "Driving While Intoxicated/Impaired Report," and include a brief statement of facts in the narrative.
- R. The **ECIR** automatically enters the required data when a chemical test is administered to a defendant. To properly account for and track all DUI/DWI arrests, the supervisor will ensure a certified breath test operator completes the data entry for defendants who are administered the blood test or who refuse the chemical test. When this is necessary, the arresting officer will add the following statement on the first line of the DUI/DWI report narrative:  
"ECIR Intoximeter data entry completed by ..... " (Place certified breath test operator's name here.)
- S. Release of a Defendant  
Ensure the defendant has copies of the citation(s) issued, MSP 33, "Notification to Defendant of Result of Test for Alcohol Concentration," DR 15, and DR 15A (if

applicable) in a DUI/DWI envelope. (CALEA 61.1.4.d)

1. In situations where the defendant does not furnish satisfactory evidence of identity and the officer has reasonable grounds to believe that the defendant may not be the person the defendant claims to be, the officer is urged to take the defendant before the court commissioner for a pretrial release determination
2. Juvenile defendants must be released to a parent or guardian.
3. After being charged and processed, the defendant will be released by one of the following methods:
  - a. Taken home by a spouse, relative, or friend.
  - b. Picked up by taxicab.
  - c. Taken home by an officer (optional). Officers are not required to take **DUI/DWI** defendants home after release even if all other means have been exhausted.
4. Prior to an intoxicated defendant being released to walk home unescorted from the police station, a supervisor shall be notified and shall authorize the defendant's release. This must be done before the defendant is allowed to sign the citations. Once the defendant has signed the citations, the officer has no authority to detain the person.

#### IV. Chemical Tests for Alcohol

- A. The type of test administered to a defendant will be the breath test. The blood test may be used in any of the following circumstances:
1. The defendant is unconscious or otherwise incapable of refusing the breath test.
  2. Injuries to the defendant require removal to a medical facility.
  3. Equipment for administering a breath test is not available.
  4. The defendant is involved in a fatal or life-threatening collision involving alcohol/drugs and refuses to submit to a breath test.
- B. ECIR Intoximeter
1. The officer will request through ECC that a certified breath test operator respond to a designated location to administer the test.

2. If the results ***do not correspond with the level of intoxication (appears under the influence but the breath test results are .05 or less)***, and the defendant is not suffering from a medical condition, the officer ***shall*** contact ECC via phone and request a Drug Recognition Expert (DRE), if one is available, to perform a drug influence evaluation. If a medical condition is ***suspected***, the officer will contact ECC via phone and request MCFRS to evaluate the defendant's condition.
3. If the results are above 0.35%, and the second test results in the same or higher results, the officer will call the MCFRS to evaluate the defendant's condition.
4. If a breath test is performed for ***an allied agency***, the breath test operator will release the chemical test evidence to the arresting ***officer***. This allows the ***officer*** to testify to the results in court. If the operator prefers to retain the evidence, copies will be made for the ***officer***.
5. In all breath test cases, the breath test operator ***shall*** be subpoenaed. On the Maryland Uniform Complaint and Citation, the officer will check the witness block on the front of the citation and enter the breath test operator's name on the reverse side of copy #1 as a witness.
6. When a district's breath test unit is out of service, the officer will transport the defendant to another district/allied agency with a working unit and a certified operator from that district/agency will administer the test.
7. If it is determined that the defendant is not to be charged, the officer will obtain a CR# and complete a Police Information Report (2938) including details on the arrest and release of the defendant.

C. Blood Test

If the criteria for use of a blood test have been met, the officer will adhere to the following guidelines:

1. Only the blood alcohol collection kit approved by the State Toxicologist will be used for the withdrawal of blood. The officer will obtain a self-addressed, pre-stamped blood alcohol kit from a district station (some hospitals maintain a supply of blood kits). ***Check to ensure the kit has not expired.*** If the kit is outdated or if the exterior seal is broken, the kit will not be

used. In either case, the officer will obtain a new kit.

NOTE: MSP will not analyze expired bloodkits.

2. The officer will transport the defendant and the kit to the nearest hospital. Request the test, and advise the staff of the time remaining in the two hour limit. If the defendant is conscious, the DR-15 must be advised. If the defendant refuses to sign the DR-15 and the consent forms, no blood will be drawn except when the defendant was involved in a fatal or life-threatening collision.
3. The officer will witness the withdrawal of the blood and immediately take possession of the containers so that the medical personnel may not have to appear in court.
4. The officer will subpoena the medical personnel to court on the back of the citation. The officer will advise the medical personnel to contact the SAO before coming to court so that they may be placed on-call if desired.
5. The officer will subpoena:  
The Chief Chemist or Designee  
Chemical Test for Alcohol Unit  
Maryland State Police  
1201 Reisterstown Road  
Pikesville, Maryland 21208-3899  
on the back of the citation.
6. The officer can give the defendant a copy of the MSP 34, "Blood Analysis – Medical Personnel Payment Authorization," at this time or the officer can wait until the blood test results are returned from the laboratory and then provide the defendant with the MSP 34 and the results of the blood test. Either time will comply with state law.

D. Testifying to Test Results

If the defendant or the attorney representing the defendant stipulates to the blood or breath test results, the arresting officer may testify to the test results.

V. **Chemical Tests for Drugs/Drug Recognition Experts**

- A. Only officers designated and trained as Drug Recognition Experts (DREs) will be permitted

to request blood samples from subjects under arrest for driving under the influence of drugs. Officers can request a DRE perform a series of psycho-physical and clinical tests on the arrested subject. From that evaluation, the DRE will be able to determine if the subject has ingested drugs and, if so, what category. The DRE can then testify in court as to the results of the tests.

- B. The sites at which these evaluations are administered must be approved by the DRE coordinator based on standards pertaining to sound, space, floor covering, etc. Officers requesting the assistance of a DRE must transport the subject to the site designated by the DRE. If the subject is hospitalized, a portion of the DRE evaluation can still be conducted and testified to by the DRE. DREs will not be called to an arrest location to determine if a subject should be arrested.
- C. The following are criteria to request a DRE evaluation:
1. A suspect is arrested for driving under the influence and the subject's blood alcohol content, as determined by a breath test unit, registers .06% or less and/or does not correspond with the suspect's level of intoxication.
  2. A subject's condition is not medically related.
  3. ***The suspect admits to using drugs or the officer discovers evidence of recent drug use.***
  4. ***The CRU requests a DRE to assist with their investigation.***
  5. ***Any other instance not listed above where a DRE may be helpful, with the approval of a supervisor.***
- D. While a DRE generally will be called for DUI/drug cases, a DRE may also be used to determine drug usage in events other than traffic.
- E. ***Officers requesting a DRE will contact ECC who will attempt to locate an on-duty DRE before using the callback list.*** The DRE will contact the requesting officer by telephone to determine whether a DRE will respond. ***The DRE has the final authority to respond based on the facts and circumstances of the case.***

- F. The breath test, if administered, ***must*** be conducted prior to any drug evaluation.

## VI. Unconscious Persons

When an operator of a motor vehicle is unconscious or otherwise incapable of refusing to take a chemical test for alcohol, and probable cause exists to make an arrest, the investigating officer will:

1. Obtain prompt medical attention for the individual and, if necessary, arrange for transportation to the nearest medical facility.
2. If a chemical test for alcohol will not jeopardize the individual's health or well being, the officer will direct a qualified medical person, using a blood alcohol collection kit to withdraw blood samples. (Refer to section IV.)
3. If the individual regains consciousness or otherwise becomes capable of refusing the test prior to the withdrawal of blood, the investigating officer will advise the individual of his rights via DR-15.

## VII. Drivers Involved In Fatal/Life Threatening Injury Collisions

(CALEA 61.2.1.a, 61.2.1.d)

- A. Transportation Article, Section 16-205.1(c)(1) and (3)

"If a person is involved in a motor vehicle accident that results in the death of, or a life threatening injury to, another person and the person is detained by a police officer who has reasonable grounds to believe that the person has been driving or attempting to drive while under the influence or while impaired by alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, or in violation of Section 16-813 of this title, the person shall be required to submit to a test, as directed by the officer. Any medical personnel who perform any test required by this section are not liable for any civil damages as the result of any act or omission related to such test, not amounting to gross negligence."

- B. CRU Notification

***Upon confirmation of a fatal/life-threatening collision where alcohol or drugs are suspected and CRU is notified, the CRU supervisor, or designee, will notify the ECC supervisor who will ensure that a DRE responds to assist with the investigation. Patrol officers will not conduct SFSTs, interviews, or further process the suspect without permission from the CRU supervisor or designee.***

#### VIII. Deceased Persons

- A. When the operator of a motor vehicle dies as a result of injuries sustained in an automobile accident, the Deputy Medical Examiner will take charge of the body.
- B. The Deputy Medical Examiner will, as a matter of policy, take a blood sample from the deceased and have it analyzed for blood alcohol content by the State Toxicologist Laboratory. The results of the blood analysis will be made available to the investigating officer.

#### IX. DWI Log

- A. As requested by the Office of the Chief Medical Examiner of the State of Maryland, MSP 36B, "Alcohol Influence Log," (***DUI/DWI*** log) entries are to be completed for all alcohol related driving arrests, i.e., those defendants who elect to take the breath test, those given the blood test, and those defendants who refuse either test.
  - 1. On-duty arrests, including those where the tests are conducted at other stations, will be logged in the arresting officer's district DWI log.
  - 2. Off-duty arrests will be logged in the district ***DUI/DWI*** log where the arrest was made.
  - 3. Arrests made by on-duty officers who are not assigned to a district station (e.g., CRU) will be logged in the DWI log at the district of occurrence.
- B. Results of the breath test will be entered at the time of initial information entry. Results of blood tests will be logged upon receipt of the analysis from the State Police on the same page and line as the original arrest entry. ***Only ECIR operators are to make entries, changes or write in the log book (MSP 36).***

- C. Disposition blocks should be left blank until final adjudication takes place. At that time, the officer ***will forward the disposition to the District ECIR.*** The comments block should be utilized when a test is voided. If an error is made in a log entry, a single line must be drawn through that entry and a new entry made on the next consecutive line.
  - D. Officers shall note in arrest reports the log book page on which the test information is contained.
  - E. To assist the ***ECIR***, instructions on filling out the ***DUI/DWI*** log are kept with the log book.
  - F. **MSP 104, "Preliminary Breath Test Log"**  
Officers shall make a notation on the MSP 104 each time a preliminary breath test is either accepted or refused. At the end of each month, officers shall forward the MSP 104 to their district Intoximeter coordinator. The coordinator will compile the information and forward it to the CTAU, ***TOD.***
- #### X. Notification of Chemical Test Results
- A. Under Maryland law, Courts and Judicial Proceedings Title 10-306, the defendant or attorney must be notified, by the State, in writing, at least 30 days before trial, of the State's intention to go to trial using the chemical test results without the technician's presence. A defendant taking the breath test will receive a copy of the official result of the chemical test (MSP 33, revised 12/96) at the time of the test; however, when a blood test is conducted, this is not possible.
  - B. The MSP Chemical Test for Alcohol Unit will notify the arresting officer by mail of test results based upon submitted information from the MSP 34.
    - 1. If the defendant resides or works within the county, the officer will notify the defendant of the blood test results by personally providing the defendant with a copy of the test results.
    - 2. If the defendant lives or works outside of the county, the officer will make a reasonable attempt to have the defendant report to the station and sign for the results. If that is unsuccessful, the officer will mail the results to the defendant via registered mail, return receipt requested.

C. Once the defendant has been notified of the State's intent to proceed without the appearance of the technician (via MSP 33), the defendant must notify the State within 20 days of trial if the technician is requested to appear at trial. In the event a defendant will not be notified within the 30 day time limit, or notified at all, the officer will relay this information to the Assistant State's Attorney assigned to the case, prior to trial. Otherwise, the results may be inadmissible once trial proceedings have started.

**XI. Court Notification for Officers**

A. District Court Liaison Officer's Responsibility

The liaison officer will notify all law enforcement agencies within Montgomery County via memorandum that the arresting officer(s) in certain DWI cases will not be needed in court on the first call of the case. In the case of MCP, the liaison officer will notify the district commanders.

B. District Commander's Responsibilities

After notification by the liaison officer that an officer need not appear in court, the district commander will notify the officer that the officer is excused from appearing for that specific case even though summonsed by the District Court.

**XII. Checklist**

A. Summation of Forms for *DUI/DWI* Cases

- MVA DR-15, "Advice of Rights to Chemical Test"
- MVA DR-15A, "Officer's Certification and Order of Suspension"
- MVA DR-102, "Certification of Police Officer, Test Result of 0.04% or more- Commercial Motor Vehicle"
- MVA DR-103, "Certification of Police Officer, Violation of Alcohol Restriction"
- MSP 33, "Notification to Defendant of Result of Test for Alcohol Concentration"
- MSP 34, "Blood Analysis – Medical Personnel Payment Authorization"
- MSP 102, "PBT Advisement of Rights" (if PBT is used)
- Driving While Intoxicated/Impaired Report
- ***Subsequent Offender Addendum***
- Maryland Uniform Complaint and Citation
- A print out of defendant's driving record

- MCP 50, "Miranda Warnings" (optional)

B. Arresting officers should maintain the above documents in a case file for court presentations. If a breath test is conducted and originals are retained by the breath test operator, the officer should make copies for the case file and make another set to be forwarded to Report Review to be sent with the report to the SAO.

**XIII. Proponent Unit:** Investigative Services Bureau

**XIV. Cancellation**

***This directive cancels Function Code 515, effective date 11-18-99.***



---

Charles A. Moose, Ph.D.  
Chief of Police