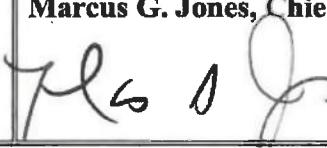




MONTGOMERY COUNTY, MARYLAND DEPARTMENT OF POLICE

TRAFFIC OFFENSES INVOLVING ALCOHOL/DRUGS

DIRECTIVE NO: FC 0515	EFFECTIVE DATE: March 18, 2024
CANCELS: FC 0515, dated <i>August 14, 2023, and Training Bulletin 22-03</i>	ACCREDITATION STANDARDS: CALEA Standards: <i>6th Edition</i> , 1.2.1; 41.2.4; 82.2.1; 82.2.2
PROPOSER UNIT: Traffic Operations Division	AUTHORITY: Marcus G. Jones, Chief of Police 

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61).

I. POLICY

- A. In accordance with the Maryland Transportation Article requirements, this department's officers should vigorously enforce the laws regarding driving under the influence (DUI) or driving while impaired (DWI).

II. DEFINITIONS

- A. **Driving Under Influence (DUI):** Driving, attempting to drive, operating, moving, or being in actual physical control of a motor vehicle with a blood or breath alcohol concentration (BAC or BRaC) of 0.08 or higher. In addition, if probable cause exists for DUI, a driver can be charged without providing an evidentiary sample.
- B. **Driving While Impaired (DWI):** Driving, attempting to drive, operating, moving, or being in actual physical control of a motor vehicle with a BAC/BRaC of more than 0.05 but less than 0.08, or while impaired by any drug, controlled dangerous substances (CDS) or a combination of drugs and alcohol.

- C. Drug Recognition Expert (DRE): A law enforcement officer with specialized training who has been *internationally* certified to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol and to identify the category or categories of drug(s) causing the impairment.
- D. EC/IR (Electro-Chemical Oxidation & Infrared Absorption Test): Evidential test instrument that performs a quantitative analysis of alcohol in the breath. The instrument detects and measures alcohol in a person's breath using an electrochemical fuel cell. Infrared energy absorption monitors the breath sample to ensure a deep lung sample is collected and not contaminated by mouth alcohol. It is commonly referred to as an Intoximeter.
- E. Standardized Field Sobriety Test (SFST): a battery of tests developed by the National Highway Transportation Safety Administration (NHTSA) used to determine impairment by alcohol *and/or* drugs.

III. ARREST PROCEDURES

A. Initial Contact

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

B. Defendant's Vehicle

1. If an impaired driving arrest is made, an officer should search the defendant's vehicle incident to arrest, only looking for evidence relating to the DUI/DWI arrest.
2. Upon receiving permission from the defendant, the officer may move the vehicle to a nearby lawful parking area, lock it, 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 sober adult (possessing a valid driver's license) with an ownership interest in the vehicle, or the keys may be retained in a location designated by the district commander. The officer will advise the defendant and/or the adult taking custody of the defendant's vehicle that the defendant has been arrested for violation of Maryland Vehicle Law §21-902 and that they may not drive a motor vehicle within twelve (12) hours after arrest (TR §21- 902.1).
4. The final decision regarding whether to tow the vehicle rests with the arresting officer.

5. The officer should take reasonable steps to arrange alternative transportation for passenger(s). A backup 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.

IV. PROCESSING THE DEFENDANT

- A. All defendants *suspected of impaired driving* will be processed at a police facility, hospital, or a state-approved mobile breath testing vehicle.
- B. DR-15. "Advice of Rights"
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," *provided by the Maryland Motor Vehicle Administration (MVA)*.
- C. Advising a defendant of Miranda rights is discretionary. If Miranda rights are given, it should only be done after the execution of the DR-15, *chemical test (if applicable)*, and prior to asking questions from the incident report concerning the amount of alcohol consumed, when it was consumed, etc.
- D. The Maryland *Constitution's* Declaration of Rights, Article 24, requires that a person detained for DUI/DWI must, on request, be permitted to have a reasonable opportunity to communicate with an attorney before submitting to a breath test.
- E. If the defendant agrees to submit to a test, a certified breath test operator will conduct the breath test. An officer will remain with the defendant during the 20-minute uninterrupted observation 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. *Should the defendant place anything into their mouth, the 20-minute uninterrupted observation period must be restarted.*
- F. If the defendant refuses or takes the test and the results are .08 BAC or higher, the officer will execute the DR-15A form, "*Order of Suspension/Temporary Driver's License, provided by the Maryland Motor Vehicle Administration (MVA)*."
- G. 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.
- H. 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" and initial 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.
- I. The officer will complete the *MVA's* DR-102, "Certification of Police Officer, Test Result of 0.04 to 0.07 BAC, Commercial Motor Vehicle," when the officer detains an operator of a commercial vehicle for violations of §16-813 of the Maryland Vehicle Law.

- J. When a commercial motor vehicle operator is charged with a Traffic Article (TA) §16-813 violation, the officer will request, through the Public Safety Communications Center (PSCC), that a certified commercial motor vehicle inspector respond to the scene to assist with the investigation.
- K. The officer will use the *MVA's DR-103, "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 violating an alcohol restriction on that person's license; however, if the BAC is .08 BAC or higher, then the DR-15A is completed.
- L. No prisoner will be allowed access to medicine, even if it is part of the prisoner's property. If a certified emergency occurs, department personnel will notify and request assistance from Montgomery County Fire and Rescue Services (MCFRS) personnel to decide whether 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 the administration of the medicine. If the prisoner is transported to a medical facility, the test performed will be a blood test. Refer to FC 0811, "Handling, Searching, and Transporting Prisoners," for procedures regarding the transporting of prisoners to health care facilities.
- M. When placing charges, officers must remember that, as a matter of law, the officer's opinion is important, not necessarily the breath test results. 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 breath test results.
- N. The officer will complete the appropriate traffic citation(s) when charging defendants with violations of the DUI/DWI laws.
 - 1. Driving Under the Influence
TA §21-902(a)(l)(i) "Driving Under the Influence of Alcohol."
 - 2. Driving Under the Influence Per Se (If applicable)
Only issue the driving Under the Influence Per Se TA §21- 902(a)(l)(ii) when a defendant's blood/breath test result indicates a .08 BAC or higher.
 - 3. Driving While Impaired by Alcohol
TA §21-902(b)(i), "Driving While Impaired by Alcohol."
 - 4. Alcohol Restriction Violations
When someone under 21 years of age or with an Alcohol Restriction on their license 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 submit to a breath or blood test.

5. 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.
- O. 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 and/or refuses to submit to a breath alcohol concentration test, the arresting officer should immediately complete a *State's Notice of Intent to Seek "Subsequent Offender Penalties/Additional Penalty for Test Refusal form"* and serve the defendant with a copy prior to *their* release.
- P. In all cases involving alcohol/drug-related fatal collisions, the State's Attorney's Office (SAO) will be notified.
- Q. In all non-fatal collisions where the defendant is charged with DUI/DWI, the Information Management Technology Division (IMTD) Records Section will forward a copy of the Automated Crash Reporting System (ACRS) collision report to the SAO.
- R. The EC/IR operator enters the required data when a chemical test is administered to a defendant.

S. Release of a Defendant

1. Ensure the defendant has copies of the citation(s) issued, *Maryland State Police* (MSP) 33, "Notification to Defendant of Result of Test for Alcohol Concentration" (if applicable), DR 15, and DR 15A (if applicable).
2. After being charged and processed, the defendant will be released by one of the following methods:
 - a. Transported home by a spouse, relative, or friend,
 - b. Picked up by taxicab or transport by hire service *or public transportation*,
 - c. Transported home by an officer (optional, with supervisor approval). Officers are not required to take DUI/DWI defendants home after release even if all other means have been exhausted or
 - d. Transported and processed at the Central Processing Unit (CPU)
3. Juvenile defendants must be released to a parent or guardian.
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. Once the officer has issued the electronic citations (E-Tix) to the defendant or the defendant has signed the paper citations, the officer has no authority to detain the person.

V. CHEMICAL TESTS FOR ALCOHOL (CTAU)

- 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. Injuries to the defendant that require removal to a medical facility and the defendant provides consent.
 2. The defendant is incapable of taking a breath test due to a medical condition (stoma, blood in mouth).
 3. *Every breath testing instrument in Montgomery County is* unavailable, and the defendant consents.
 4. Case-specific exigency declared by an executive officer.
 5. Absent case-specific exigency, the investigating officer will obtain a search warrant for a blood test. Officers will follow the procedures described in Function Code 0714 when obtaining a search warrant.
- B. Electro Chemical Oxidation & Infrared Absorption (EC/IR)
 1. The officer will request through the Public Safety Communications Center (PSCC) that a certified breath test operator responds 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), the officer shall contact the PSCC 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 the PSCC and request Montgomery County Fire Rescue Servicers (MCFRS) to evaluate the defendant's condition.
 3. If the defendant exhibits an altered mental status, is unresponsive, or lacks motor coordination, marked by an inability to stand, walk, or sit without assistance due to alcohol and/or drug impairment, the officer will request 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. The certified breath test operator shall be subpoenaed in all breath test cases.
 6. When a district's breath test instrument is out of service, the officer will transport the defendant to another district/allied agency with a working instrument, and a certified operator will administer the test.

7. If it is determined that the defendant is not to be charged, the officer will obtain a case report number and complete a Police Information Report (2938), including details on the arrest and release of the defendant.

C. Blood Alcohol Test

If the criteria for the use of a blood alcohol 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 to withdraw blood.
2. The officer (investigating or designee) will read the entire DR-15 form to the driver and/or utilize the most current DR-15 audio file authorized by the Motor Vehicle Administration (MVA).
3. The driver will be given the opportunity to sign the DR-15 and the blood kit consent form.
4. **Unconscious Blood Draw**
Maryland's Implied Consent Law (TA §16-205.1) allows police officers to obtain a blood sample when an individual at a hospital is unconscious and unable to provide consent. The officer will request that the medical personnel draw the blood from the defendant and advise personnel of the time remaining within the two-hour limit.
 - a. *Officers shall still read and complete the DR-15 form.*
 - b. *Should the suspect regain consciousness before the blood draw, consent must still be obtained, and reading the DR-15 again may be necessary.*
5. The officer will witness the blood withdrawal and immediately take possession of the containers. The officer will subpoena the following persons:
 - a. The Chief Chemist or Designee Chemical Test for Alcohol Unit (CTAU), Maryland State Police (MSP) 1201 Reisterstown Road Pikesville, Maryland 21208-3899.
 - b. If, in rare cases, the officer does not observe the blood draw, the officer will subpoena the medical personnel to court via the traffic citation *or E-tix*. 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.

D. Testifying to Test Results

If an officer observes the blood draw and maintains the chain of custody, medical personnel are not required to testify in court.

VI. CHEMICAL TESTS FOR DRUGS / DRUG RECOGNITION EXPERTS

- A. Only officers trained *and currently certified* 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 to perform a ***Drug Influence Evaluation*** 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 DRE coordinator must approve the sites where these evaluations are administered based on sound, space, floor covering standards, 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 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 the 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 .05 BAC or less and/or does not correspond with the suspect's level of intoxication and
 - 2. The suspect admits to using drugs, or the officer discovers evidence of recent drug use, or
 - 3. The Collision Reconstruction Unit (CRU) requests a DRE to assist with their investigation or
 - 4. With a supervisor's ***notification***, any other instance not listed above where a DRE may be helpful.
- 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 the PSCC, who will attempt to locate an on-duty DRE before using the ***on-call*** 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. If administered, the breath test must be conducted before any drug evaluation.

VII. UNCONSCIOUS PERSONS

- A. When an operator of a motor vehicle is unconscious or otherwise incapable of refusing to take a chemical test for alcohol, the investigating officer will:
 - 1. Obtain prompt medical attention for the individual and, if necessary, arrange transportation to the nearest medical facility.
 - 2. ***Maryland's Implied Consent Law (TA §16-205.1) allows officers to obtain a blood sample when an individual at a hospital is unconscious and unable to provide consent. The officer will request that the medical personnel draw the blood from the defendant and advise personnel of the time remaining within the two-hour limit.***
 - a. ***Officers shall still read and complete the DR-15.***

3. If the individual regains consciousness and reasonable grounds exist to believe the individual has been driving or attempting to drive a motor vehicle under the circumstances requiring that *the individual* be asked to submit to a test under Maryland Transportation Article §16-205.1, the investigating officer will advise the individual of their rights via DR-15 (Advice of Rights) for consent or refusal to submit to a blood kit (See Section IV Paragraph C).

VIII. DRIVERS INVOLVED IN FATAL / LIFE-THREATENING INJURY COLLISIONS

A. Collision Reconstruction Unit (CRU) Notification

Upon confirmation of a fatal/life-threatening collision where alcohol or drugs are suspected, CRU will be notified. The CRU supervisor or designee will notify the Public Safety Communication Center (PSCC) supervisor. The PSCC supervisor will ensure that a Drug Recognition Expert (DRE) or Alcohol Initiatives Unit (AIU) *member* 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.

IX. DECEASED PERSONS

- A. When a motor vehicle operator dies due to injuries sustained in a motor vehicle collision, 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.

X. DUI / DWI LOG

- A. As requested by the Office of the Chief Medical Examiner (OCME) 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 when requested by law enforcement.
 1. Arrests, where a breath test is conducted utilizing an allied agency's Intoximeter EC/IR instrument, will require the arrest information to be submitted to a certified breath test operator for entry into a Montgomery County Police District Station logbook (MSP 36B).
 2. Only Certified breath test operators will make an entry into the logbook (MSP 36B) for impaired driving-related arrests by Montgomery County Police Officers or other agencies that are not participants of the breath test program.

XI. 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) at the time of the test; however, when a blood test is conducted, this is not possible.

- B. The Maryland State Police (MSP) Chemical Test for Alcohol Unit (CTAU) will notify the Montgomery County Police Department (MCP) Chemical Test Alcohol Unit (CTAU) Coordinator by mail of test results based upon submitted information from the MSP 34 form. The results will be forwarded to the arresting officer for follow-up.
- C. Once the defendant has been notified of the State's intent to proceed without the technician's appearance (via MSP 33), the defendant must notify the State within 20 days of trial if the technician is requested to appear at trial. If 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 before trial. Otherwise, the results may be inadmissible once trial proceedings have started.