



OFFICE OF THE COUNTY SHERIFF
Montgomery County, Maryland
Darren M. Popkin, Sheriff



GENERAL OPERATIONAL PROCEDURES

<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
DUI/DWI Arrest Procedures	3.10.D	08/07/15

Policy: The primary Mission of the Sheriff's Office is not traffic enforcement. Situations may arise, however, where deputies encounter a vehicle operator who is suspected of being under the influence of alcohol or a controlled dangerous substance. In accordance with the requirements of the Maryland Transportation Article, traffic stops must be made by deputies who suspect persons of driving under the influence (DUI) or driving while impaired (DWI). **(61.1.11)**

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I. Arrest Procedures (61.1.2.a, 61.1.5.a)

A. Initial Contact

- (1) The deputy will stop the operator at the earliest possible time after reasonable suspicion has been developed. Consideration for the safety of the deputy, violator, and the public should be taken when choosing a location for the traffic stop.
- (2) If possible, the deputy 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 deputy should not read Miranda rights to the operator at this point.
- (3) The deputy will ask the operator to perform the Standardized Field Sobriety Tests (SFST) to establish additional probable cause for arrest.

B. Defendant's Vehicle

- (1) If an arrest is made, the arresting deputy will search the defendant's vehicle for weapons or other items that may pose a threat to the deputy, as well as any evidence relating to the DUI/DWI arrest.

- (2) The deputy may leave the vehicle at the scene of the stop if it is in a safe and legal location. If the vehicle is not in a safe and legal location, (i.e. if it is parked too close to the travel portion of the roadway) the deputy should tow the vehicle.
- (3) Alternatively, 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 arresting deputy's supervisor until the owner returns in a sober condition.
- (4) The final decision regarding whether or not to tow the vehicle rests with the arresting deputy.
- (5) The deputy should take reasonable steps to arrange alternative transportation for any passengers. A back-up unit may be used since the arresting deputy'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.

II. 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 MVA form "DR-15" but prior to asking questions from the defendant concerning amount of alcohol consumed, when it was consumed, etc.
- B. In all arrests for alcohol/drug related violations involving the operation of a motor vehicle, the deputy will execute the MVA DR-15 form, "Advice of Rights to Chemical Test."
 - (1) The deputy will fill in all blanks and ensure that the entire form is read 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 deputy 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 deputy will write "refused to sign but agreed to take test" in the space designated "Operator's Signature." In both instances, the deputy will initial what is written in the "Operator's Signature" space.
 - (4) The arresting deputy 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 deputy has no responsibility to affirmatively suggest a detained person contact counsel. If a request is made by the defendant prior to conducting the chemical test, the deputy 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 deputy 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 deputy will advise the detained person of the administrative penalties imposed for exceeding the time limit to take a chemical test. The deputy 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 deputy will execute the DR-15A.
- E. If the defendant shows the deputy a valid DR-15A in place of a license, the deputy will seize that copy and issue a new DR-15A to the defendant. The deputy will include the original seized DR-15A in the envelope to MVA and make a copy for the deputy's case file.
- F. If the deputy is issuing a DR-15A as a temporary license and the defendant refuses to sign the form, the deputy 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 test. The deputy will remain with the defendant and the breath test operator during the 20 minute waiting period prior to the test. The deputy 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 deputy will complete the DR-102 (12/92), "Certification of Police Officer, Test Result of 0.04 to 0.09, Commercial Motor Vehicle," when the deputy 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 deputy will request, through ECC, that a certified commercial motor vehicle inspector respond to the scene to assist with the investigation.
- J. The deputy will use the DR-103 (3/98), "Certification of Police Officer, Violation of Alcohol Restriction," when a deputy 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 potential emergency exists, deputies 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, the deputy will advise MCFRS personnel of its existence, the contents of the label, and the prisoner's symptoms. The deputy 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 General Operation Procedures, 3.02.A Medical Transports, for procedures regarding the transporting of prisoners to health care facilities.
- L. When placing charges, deputies must remember that as a matter of law, it is the deputy's opinion that is important and not necessarily the results of the breath test. Prior to the breath test being administered, the deputy should have already formed an opinion as to the level of intoxication. Deputies 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 deputy will complete the citation(s) in the following manner when charging defendants with violations of the DUI/DWI laws: **(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 deputy must 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/or 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) When a Maryland resident under 21 years of age is stopped for a traffic violation and the deputy 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 deputy 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 a Montgomery County Police District station does not negate the observations of the deputy on the scene. The fine is the same as for TA 16-113(h). An Incident Report MCSO9 with an event 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 a citation for 16-113(b) will automatically be detected by the Motor Vehicle Administration (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 incident report MCSO9 event 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 deputy 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 incident report to the State's Attorney's Office (SAO). The fourth copy will remain with the deputy's case file.
- O. The deputy will complete a Montgomery County Police Form MCP 106, "Driving While Intoxicated/Impaired Report," and include a brief statement of facts in the narrative.

- P. 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, a certified breath test operator will complete the data entry for defendants who are administered the blood test or who refuse the chemical test. When this is necessary, the arresting deputy 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.)
- Q. When releasing defendants, 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 MVA DUI/DWI envelope.
- (1) In situations where the defendant does not furnish satisfactory evidence of identity and the deputy has reasonable grounds to believe that the defendant may not be the person they claim to be, the arresting deputy 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.

III. **Chemical Tests for Alcohol**

- A. The blood test may only be used in 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 deputy 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 deputy must 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 deputy will contact ECC via phone and request MCFRS to evaluate the defendant's condition.
 - (3) If the driver's Blood Alcohol Content (BAC) is above 0.35%, and the second test results in the same BAC or higher, the deputy will call MCFRS to evaluate the defendant's condition.
 - (4) The breath test operator will release the chemical test evidence to the arresting deputy. This allows the deputy to testify to the results in court. If the operator prefers to retain the evidence, copies will be made for the deputy.
 - (5) In all breath test cases, the breath test operator must be subpoenaed. On the Maryland Uniform Complaint and Citation, the deputy 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 MCP district station's breath test unit is out of service, the deputy 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 deputy will obtain a CR# and complete an Incident Report (MCSO9) with a Classification Code of (2938) including details on the arrest and release of the defendant.
- C. If the criteria for use of a blood test have been met, the deputy 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 deputy will obtain a self-addressed, pre-stamped blood alcohol kit from a MCP 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 deputy will obtain a new kit. MSP will not analyze expired blood kits.
 - (2) The deputy 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.

- (3) The deputy 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 deputy will subpoena the medical personnel to court on the back of the citation. The deputy 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 deputy will subpoena the Chief Chemist or Designee on the back of the citation. The address for the Chief Chemist is: Chemical Test for Alcohol Unit Maryland State Police 1201 Reisterstown Road Pikesville, Maryland 21208-3899.
- (6) The deputy can give the defendant a copy of the MSP 34, "Blood Analysis – Medical Personnel Payment Authorization," at this time or the deputy 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 deputy may testify to the test results.

IV. Chemical Tests for Drugs/Drug Recognition Experts

- A. Only a 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. Deputies 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 MCP DRE coordinator based on standards pertaining to sound, space, floor covering, etc. Deputies 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 deputy discovers evidence of recent drug use.
 - (4) Any other instance not listed above where a DRE may be helpful, with the approval of a supervisor.
- D. Deputies 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 deputy 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.
- E. The breath test, if administered, must be conducted prior to any drug evaluation.

V. 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 deputy will:

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

VI. Drivers Involved In Fatal/Life Threatening Injury Collisions (61.2.1.a, 61.2.1.d)

- A. Deputies will not conduct any investigations involving collisions; this function is the responsibility of the investigating agency.
- B. Deputies may assist with scene security if requested to do so by the investigating officer, and only until such time as additional officers arrive on scene and the deputy is no longer needed.

VII. DWI Logs

- 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. All DWI/DUI arrest, both On-duty and Off-duty arrests are logged in the DWI log at the MCP District station which the defendant was processed. Only ECIR operators are to make entries, changes or write in the log book (MSP 36).

- B. After final adjudication of the case, deputies must forward the disposition via email or memorandum to the Traffic Coordinator, who will then forward the disposition to the ECIR for inclusion in the log book (MSP 36).
- C. Deputies must note in their Incident Report MCSO9 the log book page on which the test information is contained.

VIII. Notification of Chemical Test Results

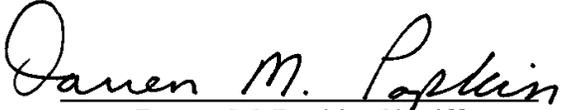
- A. Under Maryland law, Courts and Judicial Proceedings § 10-306, the defendant or attorney must be notified, by the State, in writing, at least 30 days before trial, of the State's intention to go to trial using the chemical test results without the technician's presence. A defendant taking the breath 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 deputy by mail of test results based upon submitted information from the MSP 34.
 - (1) If the defendant resides or works within the county, the deputy 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 deputy will make a reasonable attempt to have the defendant report to the station and sign for the results. If that is unsuccessful, the deputy 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 deputy 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.

IX. Checklist

- A. Summation of Forms for DUI/DWI Cases
- B. MVA DR-15, "Advice of Rights to Chemical Test"
- C. MVA DR-15A, "Deputy's Certification and Order of Suspension"
- D. MVA DR-102, "Certification of Police Officer, Test Result of 0.04% or more-Commercial Motor Vehicle"
- E. MVA DR-103, "Certification of Police Officer, Violation of Alcohol Restriction"

- F. MSP 33, “Notification to Defendant of Result of Test for Alcohol Concentration”
 - G. MSP 34, “Blood Analysis – Medical Personnel Payment Authorization”
 - H. MSP 102, “PBT Advisement of Rights” (if PBT is used)
 - I. Driving While Intoxicated/Impaired Report
 - J. Subsequent Offender Addendum
 - K. Maryland Uniform Complaint and Citation
- X. **CALEA Standards**
- 61.1.2.a, 61.1.2.b, 61.1.5.a, 61.1.11, 61.2.1.a, 61.2.1.d**

AUTHORITY:


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