

TAKOMA PARK POLICE DEPARTMENT - GENERAL ORDERS



TITLE: DUI and DWI Enforcement	NUMBER: 706
EFFECTIVE DATE: February 28, 2014	REVIEW DATE:
New X Amends Rescinds	General Order 706, dated April 23, 2002
AUTHORITY: Alan M. Goldberg, Chief of Police	CALEA STANDARDS: 61.1.5, 61.1.10, 61.1.11
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01 Purpose: To establish procedures for the arrest of individuals driving or attempting to drive a motor vehicle while intoxicated or under the influence of alcohol and/or drugs. State mandated terminology identifies the more serious offense as Driving Under the Influence (DUI) and the lesser offense as Driving While Impaired (DWI).

02 Policy: The TPPD recognizes the serious threat that drivers impaired by alcohol and/or other intoxicants pose to the safety of others and themselves, and it is the policy of this department to maintain a viable DUI/DWI enforcement program.

03 DUI/DWI Countermeasures: (CALEA 61.1.10)

A. Training: Officers receive formal training in DUI/DWI enforcement in the entrance level police training academy, which is further reinforced during the field-training program. The training includes, but is not limited to:

1. Identifying DUI/DWI motorists by characteristic driving behavior;
2. Identifying the behavioral signs of intoxication and impairment;
3. The proper administration of Standard Field Sobriety Tests; and
4. Completion of the required alcohol related reports and citations.

B. Psychomotor Testing:

1. Psychomotor tests, including the Standard Field Sobriety Tests (SFSTs), are designed test a person for motor responses and muscle control. These tests may take on a formal structure such as specific tasks for a person to perform. An important part of these tests is determining the individual's ability to follow instructions. Directions for the tests to be performed should be specific, clear, easy to follow, and reasonable.

a. The officer should explain each test and demonstrate its proper execution.

b. The officer will keep safety uppermost in his/her mind during the course of testing and especially when demonstrating the tests.

- c. The officer will conduct the tests in a location that is safe for all parties involved.
 - d. The officer should never put himself/herself in an unsafe position relative to the person being tested. This includes the position of firearms, flashlight, etc., and the proximity to the flow of traffic.
2. The officer's observations of an individual during the test period may contribute to his/her probable cause for an arrest, e.g., the individual's ability to properly follow directions, maintain balance while walking, remember simple data, etc. The following three (3) psychomotor tests are scientifically validated by the National Highway Traffic Safety Administration (NHTSA) to be used in DUI/DWI arrests:
- a. Horizontal gaze nystagmus test
 - b. Walk and turn test:
 - c. One leg stand test
3. Other optional psychomotor tests:
- a. Finger to nose test:
 - b. Finger touch test:
 - c. Alphabet test:

NOTE: A person has no constitutional right not to perform psychomotor type tests. (*Schmerber v. California*, 384 U.S. 757, 86 S.Ct 1826 16 L.Ed. 2d 908, 914)

C. Chemical Tests: The only chemical tests used by this department and admissible in court for DUI/DWI are the "Breath Test" and the "Blood Test," and the latter is administered only in unusual circumstances. To comply with provisions of law, an officer must have reasonable grounds to believe a person has been driving in an intoxicated condition.

1. If a defendant elects to take a chemical test, he/she shall be transported to the nearest police station with an Intoximeter and operator on duty. In most cases this will be the Montgomery County Police Department's 3rd District in Silver Spring, MD or 4th District in Wheaton, MD. If an alternative test site is necessary, the University of Maryland College Park Police may be used. The Intoximeter operators at these locations use only instruments approved by the State Toxicologist, receive specialized training in use of the equipment for analysis of breath samples as a measure of blood alcohol content, and are certified by the State Toxicologist. The defendant shall not be allowed to eat, drink, or smoke prior to the test, and will sign the Maryland Motor Vehicle Administration's DR-15 form indicating his/her consent to have the test administered.

2. On April 17, 2013 the U.S. Supreme Court issued a decision in *Missouri v. McNeely* that natural metabolism of alcohol in the bloodstream **does not** create an exigency that heretofore justified an exception to the Fourth Amendment's warrant requirement for non-consensual blood testing in all

drunk-driving cases. In fact, the Court stated: “We hold that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” Thereafter, the Maryland Chiefs of Police Association and the Maryland Sheriff’s Association issued a Legal Update - Alert expressing the view that ‘the forcible taking of a person’s blood is a seizure under the Fourth Amendment” and “therefore, one is required to obtain a warrant before conducting such a seizure, unless one of the warrant exceptions applies.” The Legal Update - Alert pointed out that the potential loss of the blood alcohol level alone is *not* an exigent circumstance, and not an exception to the warrant requirement. However, the inability to obtain a warrant, after valid and good faith efforts to obtain one, may provide support for a warrantless taking of blood as exigent circumstances, provided that the officer can document what efforts were taken and why they failed in furtherance of obtaining a warrant. Thus, an officer may obtain the results of a blood test with: (a) consent of the defendant for a test; (b) a warrant for the test; (c) without consent of the defendant if a warrant exception applies; and (d) a subpoena for hospital records of a blood test not ordered by the police.

3. The department does have ALCO-SENSOR III alcohol detection devices (aka Preliminary Breath Test or PBTs). Their uses include determining the unofficial blood alcohol content of a suspected drunk driver and/or an underage person suspected of intoxication. Departmental PBT operators receive detailed instruction in the administration of PBT tests and are certified by departmental instructors. The PBT results should be documented in the officer’s report, but the results typically are not admissible in court unless requested by the defense. Officers should not use PBT results in determining whether or not to charge a suspected drunk driver or underage person, but they may aid in making other decisions concerning safety of the motorist, underage person, and the general public. PBTs should be calibrated every 30 days by an Intoximeter operator located at one of the aforementioned test sites and certified by the State Toxicologist to perform preventive maintenance on breath testing equipment.

D. Selective Enforcement Initiatives: Efforts in the area of selective enforcement pertaining to impaired driving violations will include:

- 1.** Selective assignments of personnel to locations where and when analysis indicates that a significantly high ratio of accidents and alcohol related violations occur.
- 2.** Selective surveillance of those roadways and locations where analysis indicates there is an unusually high incidence of accidents involving alcohol/drug impaired drivers.

E. Education:

- 1.** The department’s Community Outreach Program (COP) officer is responsible for the development, implementation, and maintenance of several drug and alcohol awareness programs for school-aged children and concerned community interest groups.

2. The department's Traffic Enforcement officer is responsible for making educational material about impaired driving available to the public.

04 Arrest Procedures: In accordance with Maryland Vehicle Law, the following procedures will be followed when making an arrest for alcohol/drug related traffic offenses: (CALEA 61.1.11)

A. Initial Contact:

1. Apprehend the defendant at the earliest possible time after probable cause has been established.

2. The advisement of Miranda Rights is not necessary unless an interrogation beyond identification requirements will be undertaken.

3. If the defendant requires any prescription medication:

a. Advise him/her that, if taking the medication causes expiration of the two-hour time limit for administration of the chemical test, such action will be considered as a test refusal and may result in the suspension of the defendant's license to drive. Advise the defendant that he/she can present medical evidence substantiating the need for medication at the MVA hearing to rebut this action.

b. If the defendant still wants the medication, afford the opportunity to take the medication, wait 20 minutes, and then have the test administered. If the two-hour time limit expires, and the defendant wishes to take the test, permit him/her to take the test but make note of it in the report.

NOTE: The only medications normally required immediately are those for heart and chest pain (usually nitroglycerine), pulmonary function, or diabetes. However, it is departmental policy not to refuse a DUI/DWI defendant any prescription medication.

4. If and when a medical difficulty becomes apparent or the defendant requires other lifesaving medication, have him/her transported to the nearest hospital emergency room where medical personnel can assess the problem.

B. Defendant's Vehicle:

1. If the defendant is alone and stops the vehicle in an unsafe or illegal location, or the vehicle is impeding or will impede traffic for an upcoming rush hour, the officer may impound the vehicle.

2. If the defendant stops the vehicle in a safe and legal location, the officer should insure the vehicle is locked and secure at the scene. The keys may be turned over to a sober adult possessing a valid driver's license who responds to take custody of the defendant.

3. If the vehicle is occupied by passengers when the defendant is taken into custody, officers may release the vehicle to them under the following conditions:

a. The defendant has an ownership interest in the vehicle and grants permission to a sober licensed adult passenger to operate the vehicle.

b. One of the Passengers has an ownership interest in the vehicle and is licensed and sober; or this person grants permission to another licensed and sober person to operate the vehicle.

4. If the passengers do not meet the above criteria, the vehicle and the keys will not be released. The vehicle will then be impounded or parked and locked and the officer will place the keys in Communications Dispatch in an envelope with the defendant's name on the outside. The officer should take reasonable steps to arrange alternative transportation for the passengers. Factors such as time of day, adverse weather conditions, location of arrest, age, sex, and the physical conditions of the passengers should be used as guidelines when weighing alternatives for the disposition of the passengers.

C. Documentation:

1. The officer will complete an E-Justice (EJS) Offense Report with the assigned incident number. Vehicle Report and Impounded Property forms, when used, will have the same incident number as the original EJS Offense Report. Copies of the MVA forms DR-15 and DR-15A will also include the same incident number and be attached to the original report.

2. In the infrequent instances in which a defendant is taken before a District Court Commissioner, the officer will complete a "Statement of Probable Cause" (District Court Form PC/DC/CR 4), which will be attached to the Maryland Uniform Complaint and Citation.

D. License Confiscation:

1. The MVA form DR-15A "Officer's Certification and Order of Suspension" is used to indicate: (a) Surrender of Maryland Driver's License; (b) Order of Suspension; (c) Issuance of a Temporary License; (d) Driver's request for a hearing; (e) Officer Statement of Reasonable Grounds; (f) Evidence of refusal; (g) Results of test for alcohol concentration.

2. Administrative Per Se in Maryland laws generally provide for a police officer to confiscate a person's driver license (Maryland only) at the time of arrest for intoxication or related violations. Officers must:

a. Follow the guidelines and procedures contained in the DR-15A regarding license suspension and issuance of a temporary license, etc., depending on the individual circumstances of the incident.

b. Ensure that all paperwork and forms are completed properly, and that the necessary paperwork is received by the MVA.

NOTE: A temporary license will not be issued to persons with out of state licenses, suspended/revoked/canceled licenses, or unlicensed drivers.

05 Advice of Rights to Chemical Test: (CALEA 61.1.11)

A. In all arrests for impaired driving, except involving fatality or critical injury, the DR-15 “Advice of Rights to Chemical Test” will be executed. All blanks must be filled in and the completed form read (word for word) to the defendant, who will be given the opportunity to sign the form acknowledging he/she has been given the opportunity to either consent to or refuse the test. If the defendant refuses to sign, write “refused” in the space designated “Driver Signature.” The original (white) will be retained by the arresting officer, a copy (yellow) forwarded to the MVA, and a copy (pink) given to the defendant.

NOTE: Article 24 of the Maryland Declaration of Rights requires that a person detained for Impaired Driving must, on request, be permitted a reasonable opportunity to communicate with counsel before submitting to an Intoximeter test.

B. The reasonable grounds field on the DR-15A must be filled in. “See attached” may be used only if the defendant is provided with the attachments at the time of arrest. The statement “the above stated facts are true and accurate to the best of my knowledge, information, and belief” must be inserted at the end of the attachment.

C. Arresting officers have no responsibility to affirmatively suggest a detained person contact counsel at this point in processing the defendant. If such a request is made prior to conducting the chemical test the officer will:

1. Note the time of the request;
2. Allow ample use of telephone to the detained person
3. Note number of calls attempted; and,
4. Provide Public Defender’s phone number if defendant so requests.

D. Officers will not allow this request to interfere with the mandated two (2) hour time limit for conducting the chemical test. If it appears that notification of counsel will exceed the two hour limit, advise the detained person of the administrative penalties imposed on the DR-15 for exceeding the time limit to take a chemical test, initiate a DR-15A form (if appropriate) noting a refusal, and continue to process. (The two-hour time limitation begins at the moment of arrest.) Expiration of the time limit does not preclude an officer from having the test administered, even though the State has lost its prima facie evidence.

E. Remain with the defendant during the twenty minute waiting period prior to the test and witness the administration of the test to provide corroborating testimony if necessary. **Do not allow the defendant to put or keep anything in his/her mouth from the time of arrest until after the test has been administered (except as previously indicated in Section 04 A 3 a and b herein). Note the time the defendant's mouth was inspected.**

F. If the defendant agrees to submit to a test, the Intoximeter test will be conducted. If the defendant refuses the test, the DR-15A form must also be completed. A properly prepared DR-15A is a necessary condition for the Exercise of Administrative Jurisdiction by the MVA under the Implied Consent Law.

NOTE: The Advice of Rights warning contained in § 16-205.1 of Maryland Transportation Article and cited at the top of the DR-15 applies to all individuals, licensed, unlicensed, or out-of-state residents. However, if the individual is not licensed to drive by Maryland, a warning must be given that the MVA may notify, in writing, the resident state, and any other state where the individual is licensed, of any suspension of driving privilege invoked in Maryland as a result of refusal to submit to a chemical test.

G. Disposition of DR-15A copies:

1. The officer will retain the original copy for court.
2. The defendant will be given a copy.
3. Fold, seal and mail the hard copy with the advice of rights DR-15 form and any driver's license confiscated to MVA following instructions on the back of the form. This mailing must be completed by the end of the arresting officer's tour of duty.

06 Charging: The defendant will be charged on a Maryland State Citation by circling the pre-printed charge, if available, or by writing in the applicable charge. The following guidelines apply: (CALEA 61.1.11)

- A. 21-902(a) for Blood Alcohol Content (BAC) of .08 or higher.
- B. 21-902(b) for BAC of .05 - .07.
- C. 21-902(c) for Alcohol and Drugs.
- D. 21-902(d) for Drugs.

E. If the defendant refuses the Intoximeter test, then two citations, i.e., one for 21-902(a) and one for 21-902(b), should be issued. These charges will be amended by the State's Attorney at the time of trial.

F. The defendant need not be taken before a District Court Commissioner when Impaired Driving is the most serious charge and/or there are no associated charges that require appearance unless there is concern regarding the defendant's appearance in court.

07 Chemical Test for Alcohol: (CALEA 61.1.11)

A. Breath Test: The type of breath test administered to a defendant will be the Intoximeter Test.

1. A blood/alcohol test level of .07% is prima facie evidence of driving while impaired by alcohol. A blood/alcohol test level of .08% is prima facie evidence of driving under the influence.

2. If a commercial motor vehicle violator submits to a breath test and the results are .04% or higher, but less than .08%, the officer will complete MVA form DR-102. If the results are .08% or more, the officer will complete form DR-15A.

3. A blood/alcohol test level of .02% recorded for a Maryland licensed driver under 21 years old, or any other Maryland licensed driver who has an alcohol restriction on his/her license, is prima facie evidence of violation of a restricted license requirement.

4. If the test results are .30% or higher, a second test should be given immediately. If the second test results are the same or higher, fire & rescue should be called to have the defendant transported to the nearest hospital emergency room for examination.

B. Blood Test: If one of the criteria for a blood test specified in section 03 B 2 herein has been met:

1. The arresting officer will obtain a self-addressed, pre-stamped blood alcohol kit and transport the defendant and the kit to the hospital in accordance with the following:

a. The officer will report to the emergency room, request the test, and advise the receptionist of the time remaining before the test becomes invalid due to expiration of the two-hour limit.

b. Only the blood alcohol collection kit approved by the State Toxicologist will be used for the withdrawal of blood. The forms contained in the blood kit will be filled out as follows:

i. The consent form is to be signed by the accused and retained by the officer.

ii. Complete the blood collection report (MSP 34) and include it with the samples. (Must include date and time of arrest because MSP will not process the sample without this information.)

iii. Complete all four seals; attach two seals to the blood tubes (one on each) and the remaining two will be used to seal the kit inside the mailing container.

iv. The MSP 34 form will only be completed in the section entitled "Arrest Information." All areas therein are self-explanatory except the following:

(a) Time: (use arrest time)

(b) Installation Commander: (disregard)

(c) Send results to: (use arresting officer's name and TPPD station address)

c. The entire kit will be properly sealed and mailed immediately only from a mailbox where daily pickup is made. (Registered Mail is not necessary.)

3. The arresting officer will witness the withdrawal of blood and immediately take possession of the containers so that the medical personnel will not have to appear in court (unless subpoenaed by the defense).

4. The MSP's Chemical Test for Alcohol Unit will notify the arresting officer by mail of the blood test results based upon the submitted information in the MSP 34 form. The arresting officer will notify the defendant of the blood test results by providing him/her with a copy of the letter (MSP 33)

5. The arresting officer will not complete any charging documents until the blood test results have been returned. At that time, the officer will attempt to make contact with the defendant.

a. The DR-15A will be completed if the blood test result is .08 or higher. The "Issue Date" on the form will be filled in when the form is served on the defendant.

b. In the block titled "Certification of Test Technician or Analyst," the officer should print the words "Blood Test - See Attached MSP Form #33."

c. The officer will then forward the completed DR-15A package (to include MSP Form #33) to the MVA in the pale blue envelope.

d. In the event the arresting officer cannot make personal contact with the defendant, the DR-15A form should be sent to him/her by restricted registered return receipt mail, as this ensures that only the defendant can sign for the letter and that the signed receipt will be available for court purposes.

C. Testifying to Chemical Test Results: If the defendant, or the attorney representing the defendant, stipulates to the breath or blood test results, the arresting officer may testify to the test results. If test results are not stipulated to, adhere to the following:

1. Breath Results - If the Intoximeter operator is not present, the arresting officer will seek a continuance of the case from the State's Attorney. The officer will direct a subpoena to the Intoximeter operator, noting the defendant's name and date of arrest.

2. Blood Results - Arresting officer will request a continuance from the State's Attorney and direct a subpoena to the Chief Chemist, or designee, noting the defendant's name and the control number as it appeared on the MSP 33. The address should read: The Chief Chemist or Designee, Chemical Test for Alcohol Unit, Maryland State Police Headquarters, 1201 Reisterstown Road, Pikesville, Maryland 21208-3899.

08 Unconscious Persons: (CALEA 61.1.11)

A. 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 officer will:

- 1.** Obtain prompt medical attention for the individual and, if necessary, arrange for transportation via ambulance if possible 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 approved by the State Toxicologist, to withdraw blood samples. The consent form will be completed and the word "unconscious" written where the defendant's signature would normally be placed.
- 3.** If the individual regains consciousness or otherwise becomes capable of refusing the test prior to the withdrawal of blood, the investigating officer will proceed with processing as indicated in section 07 B of this directive.

09 Drivers Involved in Fatal/Life-threatening Collisions: (CALEA 61.1.11)

A. If a person is involved in a motor vehicle accident that results in the death or serious injury to another individual 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 intoxicated or while under the influence of alcohol, the person shall be required to submit to a chemical test, as directed by the officer, of the person's blood or breath to determine the alcohol content of the person's blood. 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. (Transportation Article, Section 16-205.1 ©).

B. Upon confirmation of a fatal/life-threatening collision wherein alcohol or drugs are suspected, the Montgomery County Police Department's Collision Reconstruction Unit (CRU) will be notified. The CRU supervisor, or designee, will notify the ECC supervisor who will ensure that a Drug Recognition Expert (DRE) responds to assist with the investigation. Patrol officers will not conduct SFSTs, interviews, or further process the suspect(s) without permission from the CRU supervisor or designee.

10 Deceased Persons: (CALEA 61.1.11)

A. When the operator of a motor vehicle dies as a result of injuries sustained in an automobile 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.

11 Sobriety Checkpoints: See General Order 716, entitled Sobriety Checkpoints.