

**FREDERICK POLICE DEPARTMENT
GENERAL ORDER**

Section 2: Traffic Operations **Order Number:** 270
Topic: DUI/DWI ENFORCEMENT **Issued by:** Chief of Police
Approved: 02/01/17
Review: Annually in December by Commander, Patrol Division 2
Supersedes: G.O. 270, dated 11/1/14

.01 PURPOSE:

To establish procedures for the arrest of individuals for driving or attempting to drive a motor vehicle while under the influence of alcohol or while impaired by drugs, alcohol, or alcohol and drugs, or controlled dangerous substances (CDS).

.02 CROSS-REF:

[G.O. 155 - " Required Incident Paperwork"](#)
[G.O. 230 - "Traffic Accident Investigations"](#)
[G.O. 234 - " Fatal Collisions"](#)
[G.O. 290 - "Vehicle Towing and Impound Procedures"](#)
CALEA STANDARDS: 1.2.5, 61.1.2; 61.1.5; 61.1.11

.03 DISCUSSION:

.04 POLICY:

The policy of the Department is to enforce Driving Under the Influence of Alcohol (DUI) laws and to educate the public when appropriate. The Department will provide officer training to develop skills for detecting the influence of alcohol or drugs, promote selective DUI enforcement, and ensure proper administration of preliminary and evidentiary intoxication tests. Officers will make it a priority to detect those persons that are driving while under the influence of alcohol/impaired and to take appropriate enforcement action.

.05 DEFINITIONS:

.10 TRAINING:

1. Officers receive formal training in DUI enforcement during entrance level training, which is further reinforced during the Field Training Program.
2. Entrance level training includes, but is not limited to:
 - A. Identifying suspected DUI motorists by characteristic driving behavior;
 - B. Identifying the behavioral signs of intoxication;
 - C. Properly administering field sobriety tests recommended by the National Highway Traffic Safety Administration (NHTSA);
 - D. Developing probable cause for arrest;
 - E. Completing the required DUI reports/citations; and,
 - F. Courtroom testimony.

.15 CHEMICAL ANALYSTS:

1. Departmental Preliminary Breath Test (PBT) operators receive detailed instruction in the administration of PBT tests and are certified by the Department via the Maryland State Toxicologist.
2. Departmental Intoximeter EC/IR II operators/administrators receive detailed instruction in the operation and administration of Intoximeter EC/IR II equipment through the Maryland State Police and are certified in its operation by the Maryland State Toxicologist. The Department will designate personnel to be responsible for all record keeping of Intoximeters and PBT's as stipulated by the Maryland State Toxicologist.

.20 COMMUNITY PROGRAMS:

Alcohol awareness programs for school age children, concerned community organizations, and interested groups will be presented as requested and as resources allow. Requests should be forwarded to the Outreach Team Supervisor. The Department will also make available literature, pamphlets, etc., free of charge, to any interested citizen.

.25 SELECTIVE ENFORCEMENT:

1. Departmental personnel will utilize various strategies to combat the problem of impaired drivers. These strategies will include selective enforcement, and supplemental alcohol enforcement duty sponsored by the Maryland State Highway Traffic Programs.
2. During time periods known to have a high incidence of drinking and driving, supervisors should direct officers to those locations that require selective traffic enforcement for DUI as workload and manpower permit. Selective enforcement does NOT include officers sitting at alcohol establishments waiting for impaired drivers to leave the area. Officers observing a suspected impaired driver walking towards his vehicle will first attempt to stop and advise him not to operate the vehicle due to his condition.

.30 CHARGING SECTIONS AND EVIDENCE PRESUMPTIONS:

1. Transportation Article 21-902 is the charging section for: Driving Under the Influence of Alcohol, while under the influence per se, while impaired by alcohol, or impaired by drugs or drugs and alcohol. There are additional sections which deal with other aspects of alcoholic beverages or drugs while driving also contained in the Transportation Article such as driving a motor vehicle while consuming alcohol, etc., which personnel will familiarize themselves with.
2. Personnel who arrest those individuals for Driving Under the Influence of Alcohol will charge:
 - A. Drivers who take an Intoximeter Test indicating a BAC of .08 or greater will be charged with three citations:
 - (1) 21-902(a)(1)(i) - Driving Under the Influence of Alcohol;
 - (2) 21-902(a)(1)(ii) - Driving Under the Influence of Alcohol Per Se; and,
 - (3) 21-902(b)(1)(i) - Driving While Impaired by Alcohol.
 - B. Drivers who refuse to take an Intoximeter Test will be charged with two citations:
 - (1) 21-902(a)(1)(i) - Driving Under the Influence of Alcohol; and,

- (2) 21-902(b)(1)(i) - Driving While Impaired by Alcohol.
- C. Drivers who take an Intoximeter Test indicating a BAC of .07 will be charged with the single citation of 21-902(b)(1)(i) - Driving While Impaired by Alcohol.
- D. A driver who takes an Intoximeter Test indicating a BAC of 0.05 - 0.06 can be charged with DWI if the arresting officer has supportive evidence of the impairment; however, there is no presumption.
- 3. Officers who have probable cause to believe (as determined by a Drug Influence Evaluation conducted by a Certified Drug Recognition Expert) that arrestees were driving while impaired by drugs, or drugs and alcohol, or controlled dangerous substances will charge those arrestees with both:
 - A. 21-902 (c)(1)(i) Driving Vehicle While Impaired by Drugs or Drugs and Alcohol; and,
 - B. 21-902 (d)(1)(i) Driving Vehicle While Impaired by Controlled Dangerous Substances.
- 4. Title 10, Subtitle 3 of the Court and Judicial Proceedings for the State of Maryland is the source document for specifications of evidence for DUI such as time limitations, qualifications of persons administering the chemical tests, results of analysis and presumptions, refusal to submit, etc.

.35 DETECTION AND PRE-ARREST SCREENING:

Detection is the first step in any DUI enforcement action. An officer's observations at this stage are critical in establishing probable cause upon which the decision to arrest (or not arrest) is based. Therefore the officers will perform the following tasks:

- 1. After reasonable articulable suspicion has been established, stop the driver in a safe location following departmental traffic stop procedures.
- 2. Questioning the driver without Miranda Rights pertaining to alcohol/drug usage is permissible *at this point* because an arrest has not occurred yet and the officer is still in the fact-finding stage.
- 3. If impairment is suspected, request the driver to step from the vehicle and move to a safe location to administer the Standardized Field Sobriety Tests (or pre-arrest screening). The driver has the right to refuse to submit to any and all tests. If the driver refuses to submit to any test, the officer must make his decision to arrest based on other factors, e.g., observation, bloodshot eyes, slurred speech, odor of alcoholic beverage, driving behavior.
- 4. If a suspected DUI driver has been involved in an accident, medical evaluation and treatment will take precedence over administration of the tests. If a particular test would aggravate the suspect's injuries (actual or claimed), that particular test will not be administered and will be noted on the incident report if the individual is arrested.
- 5. If a Preliminary Breath Test (PBT) is offered to a violator, the PBT will only be operated by an officer trained and certified in the use of this piece of equipment. The violator must be read MSP Form #102 (PBT Advisement of Rights). Operators will prepare and complete the PBT Log and any accompanying paperwork.
- 6. Standardized Field Sobriety Tests will be administered and will consist of Horizontal Gaze

Nystagmus, One-Leg Stand, and Walk and Turn. *On occasion, a member of the Department will not be certified in the three field sobriety tests mentioned (usually lateral transfers). If this is the case, the officer will use tests which are recognized by NHTSA and the State of Maryland, if the officer is certified in these tests. Officers who are not certified in the three tests which are taught by the Department, will be certified as soon as practical by attending the DUI portion of the academy.*

7. If arrested, the vehicle will be legally parked, driven from the scene by an authorized sober driver, or towed per departmental procedures. (G.O. 290)
8. The arresting officer will take reasonable steps to arrange alternative transportation for any passengers. Factors such as time of day, adverse conditions, location of arrest, age, sex, and physical condition of passengers should be used as guidelines when weighing alternatives for the disposition of the passengers.

.40 ARREST AND PROCESSING:

1. After establishing the elements of a DUI violation, the violator will be placed under arrest, handcuffed, searched, and transported to Headquarters without unnecessary delay for processing pursuant to departmental procedures. (Exception - If the violator is injured and needs to be transported to a medical facility.)
2. Officers will search the vehicle incident to arrest or by other warrant exceptions and note the presence of any arrest related materials or contraband. The search will be conducted in accordance with departmental policy and current case law.
3. In all arrests for DUI, the arresting officer will read the entire DR-15 Form, Advice of Rights for Chemical Test, to the violator who will be requested to sign it. Violators speaking a foreign language may utilize the foreign language interpreting service of the Department. The violator will not be handed the DR-15 Form and told to read it themselves; however, the violator may be given the form to read if they request to see it after it has been read to them.
 - A. A violator involved in a collision involving a **fatality or life-threatening injuries** in which there is probable cause to believe they are operating DUI **must submit** to a chemical test. (Refer to Sec. .50.5 for further information.)
 - B. The reading of the DR-15 to a violator advises them of the administrative penalties if they refuse to submit to the chemical test.
 - C. The reading of the DR-15 also advises them of the administrative penalties if they consent to the chemical test with a resulting BAC of .08 but less than .15, and an increased administrative penalty for a BAC of .15 or higher.
4. If the violator agrees to submit to the breath test, the arresting officer must ensure that the violator's mouth is clear of **any and all** foreign objects (to include tongue rings) and does not place anything in their mouth including food, drink, or smoke for a minimum of 20 minutes prior to the test. The chemical test is to be done within two hours. The two-hour time limitation begins at the moment of arrest. The officer, or his designee, will observe the violator during the waiting period prior to the test to ensure they do not put anything into their mouth.
5. Article 24 of the Maryland Declaration of Rights requires that a person detained for DUI must, on request, be permitted a reasonable opportunity to communicate with counsel before submitting to a chemical test. Defendants may also elect to submit to a BAC test conducted

by their attorney prior to submitting to the State test; however, the defendant must then wait an additional 20 minutes before he will be able to take the Department's test if the defendant placed anything in his mouth. Officers should observe the administration of the attorney's test. Officers 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 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. *A test may be given after two hours if the suspect agrees; however, the presumption or prima facie evidence is lost.*

6. After the violator has taken the chemical test, the violator must be advised of their Miranda Rights if they are to be questioned and the officer intends to use the violator's statements as evidence. The violator has a constitutional right to consult with an attorney. Questioning of the violator will stop if the violator requests an attorney. The violator will be provided with a phone and an area with which to consult an attorney. Officers will not monitor, eavesdrop, or listen-in on the conversations; however, they may observe the individual to ensure the individual does not put something in their mouth prior to chemical testing.
 - A. When complying with the violator's demand to consult an attorney, officers should document the date and time of the demand, and the date, time, and number of calls attempted.
 - B. Officers will provide the Public Defender's phone number, (301) 600 -1988 (during business hours) or pager number, (301) 624-9979, (after hours), if so requested.
7. **DR-15A:** If the violator has a Maryland Driver's License and their test result is 0.08 or higher, or the test is refused, the DR-15A Form must also be completed in as much detail as possible in accordance with Maryland's *Administrative Per Se Law*. The DR-15A Form, accompanied by the Maryland Driver's License, along with the DR15, and MSP 33 Form (Notification to Defendant of Result of Test for Alcohol Concentration), will be mailed by the arresting officer to the Motor Vehicle Administration (MVA) within 72 hours of the violation in the envelope provided. The DR-15A will not be completed if a violator's test result is less than 0.08. The DR-15A will be completed, but the temporary license will not be issued if the defendant refused to sign the temporary license or possesses an out of state license.
8. **DR-103:** (Violation of Alcohol Restriction). Complete this form and send to MVA with a copy of Advice of Rights Form, DR-15, if the test result was .02 or greater and less than 0.08 for a person who violates any alcohol restriction. Do NOT complete if the test result was 0.08 or more.
9. **DR-102:** (Alcohol Test Result of 0.04 to 0.08 Commercial Motor Vehicle). Complete this form and send to MVA with Form MSP-33 Certification if the test result was 0.04 to 0.07. Complete Form DR-15A Certification and Order of Suspension if the test result was 0.08 or more.
10. The arresting officer will complete all paperwork mandated in G.O. 155 (Required Incident Paperwork).

.45 DISCRETIONARY RELEASE:

A physical arrest for DUI is authorized by Title 26, Section 202 of the Maryland Vehicle Law contained in the Annotated Code of Maryland, Transportation Article. The Department has set criteria to determine whether or not a violator will be taken to Central Booking for a bond hearing before a District Court Commissioner or released to a responsible party. Discretionary Release Criteria

consists of the following:

1. The identity of the accused is clearly established;
2. The accused is mentally and physically suitable for release to a responsible and sober individual;
3. The accused has a responsible and sober adult able to respond to Headquarters in a timely manner to retrieve the accused; and,
4. Both the accused and the responsible party are to be specifically cautioned against returning to the vehicle and allowing the accused to drive within 12 hours after the arrest. The responsible party picking up the accused will sign a release (Form 01-OB-010) agreeing to this specific condition.

.50 NO IMPAIRMENT PRESUMED:

1. Courts and Judicial Proceedings, Section 10-307 states that if at the time of testing a person has an alcohol concentration of 0.05 or less, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the person was or was not under the influence of alcohol or that the person was or was not driving impaired by alcohol, but this fact may be considered with other competent evidence in determining whether the person was or was not driving while under the influence of alcohol or driving while impaired by alcohol.
2. If an officer encounters this situation after arresting a person for DUI, and there is no other evidence available to indicate drug usage, the officer will issue the citation for DWI and allow the defendant to sign and be released without further processing if there are no other arrestable offenses. The officer will document his actions in his incident report and advise the State's Attorney's Office of the facts prior to trial. Ultimately, the State's Attorney's Office will determine if the case has enough merit to go to trial.

.60 CHEMICAL TESTS FOR ALCOHOL:

1. 0.07 is prima facie evidence of driving while impaired by alcohol. 0.08 or higher is prima facie evidence of driving under the influence of alcohol. Normally, the Intoximeter EC/IR will be utilized; however, a blood test must be used in the following circumstances:
 - A. If the defendant is unconscious or otherwise incapable of refusing the breath test;
 - B. Injuries to the defendant require removal to a medical facility; or,
 - C. The Intoximeter is not available.
2. *Breath Test Procedures:*
 - A. Notify Communications that an Intoximeter operator is requested;
 - B. Officers will respond to the Intoximeter operator's location with the defendant, completing as much of their paperwork as possible. MSP and Frederick County Sheriff's Office have operators if the Department's are unavailable. If no agencies within the county or neighboring county are available to assist, the blood test will be offered;
 - C. If the results are 0.00, an indication that no alcohol is present, the operator will

conduct a simulator/validation test to ensure that the instrument is working properly. If it is working properly, the defendant can be asked to take another test; however, if he refuses, it will not be held as a refusal. If the instrument is malfunctioning, then the defendant can be asked to take another test. If he agrees, he should be taken to another facility with another working Intoximeter EC/IR II. If he refuses, then the test results of the malfunctioning Intoximeter will be voided and it will not be considered a refusal;

- D. If the Intoximeter is working properly and the defendant refuses to submit to another breath test, the defendant may be checked by a certified Drug Recognition Expert (DRE), if one is available. If the DRE is not available, the defendant may be transported to the closest emergency room for examination if the police officer believes it is necessary for medical purposes;
- E. *If the results are above 0.30, emergency personnel should be called to transport the defendant to the closest emergency room for examination.*

3. *Blood Test Procedures:*

- A. If a blood test is utilized, the arresting officer will obtain a self-addressed blood alcohol kit (which has been approved by the Maryland State Toxicologist) and transport the kit, as well as the defendant, to Frederick Memorial Hospital;
- B. The officer will advise hospital personnel of the time remaining before the expiration of the two-hour limit, and the **presumption** is lost;
- C. Officers will witness the drawing of the blood by a qualified hospital employee, and will immediately take possession of the containers and package them according to the instructions contained in the box. The completed and sealed blood kit will be placed in the mail box in the garage mounted on the wall by the Chief of Police's parking space. Postage will be affixed to the blood kit by the mail room personnel;
- D. The MSP-CTAU will notify the Department by mail of test results based upon submitted information from MSP-34. Once the Department's designated chemical test personnel have logged the information, it will be forward to the arresting officer so the arresting officer can make arrangements to serve the results on the defendant. Once service has been completed, the arresting officer will forward that paperwork to Records via departmental procedures;
- E. Upon receiving the results of the blood kit from CTAU, the arresting officer will complete a supplement in ILEADS detailing the results, and if the results were served on the offender.

4. *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:

- A. Obtain prompt medical attention for the person and arrange for transportation to FMH;
- B. If a chemical test for alcohol by blood withdrawal will not jeopardize the individual's

health or well-being, the officer will direct a qualified person, using the approved blood kit, to withdraw the blood sample. The consent form will be completed and the word "unconscious" written where the defendant's signature would normally appear. If the individual regains consciousness or otherwise becomes capable of refusing the test prior to the withdrawal of blood, the arresting officer will proceed with regular processing;

C. If no blood kit is available, the officer will complete a Summons and Aid Form.

5. *Drivers Involved in Fatal or Life-Threatening Injury Collisions While Driving DUI:*

A. The on-call State's Attorney will be contacted by the investigating officer **before any testing or placing of charges.**

B. Maryland Transportation Article 16-205.1 (c)(1) *requires* the person to submit to a test as directed by the officer. If the police officer directs that a person be tested, then the provisions of 10-304 of the Courts and Judicial Proceedings Article will apply. 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. (MD Transportation Article 16-205.1 (c) (3).)

C. Because the detained person is "required" by law to submit to a chemical test, if he refuses to submit to the Intoximeter or attempts to tamper with the testing by giving incomplete breath samples, etc., he will be transported to the hospital for a blood test. The officer will follow procedures pertaining to blood test kits.

D. In order to comply with Maryland law and current case law, an officer is authorized, using a minimal amount of force, to restrain/immobilize an individual so as to allow a technician to draw the blood sample. In this event, an officer must secure a search and seizure warrant prior to the blood draw. Potentially combatant arrestees must be identified early in the event to ensure sufficient time to prepare the application. An approved template search and seizure warrant for blood draws is saved at: R:\Common\Resources\DUI Resources\Blood Search Warrant Template.

6. *Deceased Persons:*

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 custody of the body.

B. The Medical Examiner will, as a matter of policy, take a blood sample from the decedent and have it analyzed for BAC by the State Toxicologist. The results will be made available to the investigating officer upon request.

7. If CDS usage is suspected, and the arrestee is unable to perform SFSTs because they have been transported to a medical facility;

A. If the arrestee agrees to a blood test, use a department issued blood kit and send it to the MSP CTAU for analysis. Do not issue citations at this time.

B. If, after receiving results, alcohol is not present, forward the report to the DRE coordinator to determine if remaining blood sample can be tested for CDS. The DRE coordinator will also consult with the SAO before further testing is completed.

.70 DRUG RECOGNITION EXPERT (DRE) RESPONSE:

1. The Drug Recognition Expert (DRE) may be asked to perform a DRE evaluation based upon the following criteria and in accordance with the DRE S.O.P.:
 - A. A suspect is arrested for driving while under the influence of drugs;
 - B. A subject's blood alcohol content is 0.05 or below, as determined by the Intoximeter and does not correspond with his/her observable level of impairment;
 - C. A subject's behavior/condition gives indications of DUI and is not related to a medical condition such as epilepsy or a head injury; or,
 - D. The DRE will NOT be called to the arrest location to determine if an individual should be arrested.
2. From the tests administered, the DRE will be able to determine if the defendant is under the influence of drugs, and if so, what category of drug. The DRE can be summoned to testify in court if necessary.
3. The site at which a DRE evaluation is done must be sanctioned by NHTSA and must meet the standards of the DRE; therefore, officers requesting a DRE must transport the violator to the site to be evaluated by the expert.
4. If there is no DRE on duty from the Department or a neighboring agency, the arresting officer will request, through their supervisor, that Communications contact the on-call DRE.
5. If the violator is uncooperative and indicates a refusal to submit to any tests, the DRE should not be contacted.
6. If the DRE determines that the violator is under the influence of one or more drug categories, and the violator agrees to submit to the blood test, the arresting officer will transport the violator to FMH. The DRE will be responsible for supplying the blood kit and will also take custody of the blood kit and prepare it for mailing to the MSP CTAU for analysis.