



CHEVY CHASE
VILLAGE
POLICE
DEPARTMENT

Police Chief: John Fitzgerald

GENERAL ORDER: 5-22 DRIVING UNDER THE INFLUENCE

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I. POLICY

In accordance with the requirements of the Transportation Article, officers of this department will vigorously enforce the laws regarding driving a motor vehicle while intoxicated or under the influence of alcohol and/or drugs. A physical arrest for DWI/DUI is authorized by TA 26-202, and the arresting officer will use only the force necessary to accomplish lawful objectives.

II. ROADSIDE PROCEDURES

The following procedures will be followed by officers when making an arrest for alcohol/drug related traffic offenses.

- A. The officer will stop the operator at the earliest possible time after reasonable suspicion has been established. Notify CCV Dispatch and/or ECC of the traffic stop.
- B. Questioning the driver pertaining to alcohol/drug usage is permissible without the necessity to give the Miranda warnings at this point because the suspect is not under arrest.
- C. If impairment is suspected, request the driver to step from the vehicle and move to a safe location to administer field sobriety tests to establish additional probable cause for arrest.
- D. The driver has the right to refuse to submit to any and all tests.
- E. If a suspected DWI/DUI has been involved in an accident, medical evaluation and treatment will take precedence over the administration of tests.
- F. If a particular test would aggravate the DWI/DUI's injuries, actual or claimed, that particular test will not be given and will be noted in the officer's DWI/DUI Arrest Report, if the individual is arrested.
- G. If a Preliminary Breath Test (P.B.T) is offered to a violator, the P.B.T. will only be operated by an officer trained and certified in its use.
- H. The violator must read MSP Form #102, "Preliminary Breath Test Advisement of Rights", which advises the violator that reasonable grounds exist to believe that he/she is DWI/DUI, and that a

P.B.T. is being offered. MSP Form #102 also advises the violator that he/she is not required to submit to the P.B.T., that there is no penalty for refusing, and that submitting does not relieve the violator of the obligation to submit to a subsequent chemical test as prescribed by law, should he/she be charged with the DWI/DUI. A failure to read this form to a violator could result in the officer's probable cause being challenged in the MVA Administrative Hearing.

- I. P.B.T. results will be recorded in the DWI/DUI Arrest Report but **cannot** be used as evidence in court.
- J. Horizontal Gaze Nystagmus tests shall only be administered by an officer trained to administer such a test.
- K. If the driver/violator submits to the above referenced tests and, in the officer's best judgment and discretion, passes them, the driver may be allowed to leave unless the officer intends to arrest the violator for some other reason, or intends to issue citations related to the traffic stop.
- L. If all elements of the DWI/DUI violation have been clearly established and the traffic stop results in a physical arrest, the violator will be placed under arrest, searched, and handcuffed pursuant to Department policies and will be transported to a processing facility (2nd District Station), without necessary delay, unless the violator is injured in an accident and needs to be transported to a medical facility.
- M. The violator should not be advised of his/her Miranda rights, and officers should not conduct an interrogation following the subject's arrest until after the violator has been given the opportunity to take the blood or breath test.

III. TOWING OF VEHICLES

- A. When an arrest is made, the arresting officer will search the defendant's vehicle incident to arrest for evidence relating to the DWI/DUI arrest.
- B. If the vehicle is occupied by passengers when the defendant is taken into custody, the officer may release the vehicle to them under the following circumstances:

1. The defendant has an ownership interest in the vehicle and grants permission to a sober, licensed adult (18 years or older) passenger to operate the vehicle.
 2. 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 operator to operate the vehicle.
 3. If the passengers do not meet the above criteria, the vehicle and keys will not be released and the vehicle will be towed in accordance with Department policies and procedures.
- C. Arrangements should be made by the officer for alternative transportation for the passengers, with thought given to weather, location of arrest, age, sex, and physical condition(s) of the passengers.

IV. PROCESSING A DUI ARREST

1. The arresting officer will read the DR-15 form (Advice of Rights For Chemical Tests) *aloud* to the violator, who will be requested to agree to submit to the test and to sign the form.
2. If the violator speaks Spanish or another language for which a DR-15 printed in that language is available, the arresting officer will have an officer fluent in that language read the DR-15 to the violator. **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.**
3. If the violator agrees to submit to the breath test, the arresting officer must ensure that the violator does not eat, drink, or smoke anything until after the test has been administered.

Article 24 of the Maryland Declaration of Rights requires that a person detained for DWI/DUI must, on request, be permitted a reasonable opportunity to communicate with an attorney.
4. In the event the processing takes place at a hospital (i.e., violator transported from accident scene), the violator's/defendant's only option is the blood test, which, to be admissible, must be administered within 2 hours of the arrest. Officers will read the DR-15 form (Advice of Rights For Chemical Tests) *aloud* to the violator, who will be requested to agree to submit to the test and to sign the form.
5. After the violator has taken the breath test (or blood test if transported to a hospital), the violator must be advised of his/her Miranda Rights by the arresting officer if they are to be questioned and the officer intends to use the violator's statements as evidence.

6. The violator has a Constitutional right to consult with an attorney and questioning of the violator will stop if the violator requests one. If the violator demands an attorney, and the officer intends to use the violator's statements as evidence, the violator will be provided with a telephone and an area with which to consult an attorney.
 - a. Communications between the violator and his/her attorney are privileged and officers will not monitor, eavesdrop, or listen-in on them.
 - b. When complying with a violator's demand to consult an attorney, officers should document the date and time of the demand, and date, time, and number of calls attempted.
 - c. If the DWI/DUI is involved in a fatal accident, the Public Defender's Office has a "Duty-Attorney" which can be contacted 24-hours a day. During business hours, the violator can contact the Public Defender's Office directly.
7. Questioning the violator may resume if the violator, after consulting an attorney, waives his/her rights and agrees to answer questions; however, the violator should be re-advised of their Miranda Rights.
8. The arresting officer will read the MCP Form #50 to the violator and not give it to the violator to read unless the violator requests to see the form.
9. The violator will be given a copy of the MCP Form #50, whether signed or not.
10. While at the processing facility (Bethesda District Station), the arresting officer will ensure that the processing facility's policies and procedures are followed by both the officer and the violator.
11. During processing, the violator will be secured in a place, and in such a manner, that ensures the safety and security of the arresting officer, violator, and anyone else with access to the area.
12. If the violator's test result is a **0.08%** or higher, or the test is refused, the officer shall complete, in accordance with "Maryland's "Administrative Per Se Law," a DR15-A Form in as much detail as possible and will mail it, via U.S. Mail within 72 hours, along with the violator's/defendant's MARYLAND DRIVER'S LICENSE.

An out-of-State license will not be submitted with the DR-15A.

13. The DR-15A **will not** be completed if a violator's test result is less than **0.08%**, or the violator is from outside the State of Maryland.
14. The DR-15A will be completed, but the temporary license will not be issued if the violator/defendant refuses to sign the temporary license.
15. When the blood test is administered, the following procedures will be adhered to:
 - a. The arresting officer will check the expiration date on the blood kit to ensure that it is still current.
 - b. Only the blood kit approved by the State Toxicologist can be used.
 - c. Check the blood kit to ensure that it contains everything that it is supposed to have.
 - d. Complete the "Consent Form" area of the Blood Collection Report and have the violator/defendant sign it.
 - e. After the defendant has signed the Consent Form, instruct the "Qualified Medical Person" to withdraw the blood using **only the equipment contained in the kit** and while the officer witnesses the actual withdrawal of the blood into both of the blood kit's vials.
 - f. After the technician has drawn blood from the defendant into the 2 vials included in the kit, the vials should be shaken gently and sealed by the officer using the 2 white "information seals" placing the center of each seal directly over the stopper portion of the vials.
 - g. The needle and the Betadine swab should be disposed of by the medical person according to established medical facility procedures. **DO NOT SEND THE NEEDLES IN THE KIT TO THE LAB.**
 - h. The other 2 "information seals" will be completed and will be used to seal the blood kit.
 - i. The sealed blood kit will then be placed into the zip-lock bag, and the bag and all completed forms will be placed inside the cardboard mailer, closed and sealed by using the 2 "integrity seals."
 - j. The blood kit will be mailed on or before the end of the arresting officer's tour of duty, by dropping in any U.S. mailbox.
 - k. The officer's report will fully document the

circumstances under which the blood was drawn.

V. COLLISIONS INVOLVING A FATALITY OR LIFE-THREATENING INJURY

- A. If an officer responds to a collision involving a fatality of a life-threatening injury, the officer shall notify the following units/individuals as soon as practical:
 1. MCP Collision Reconstruction Unit (CRU)
 2. MCP Shift Supervisor
 3. Chevy Chase Village Chief of Police
 4. MCP Car 10 (if on duty at that time).
- B. Upon the arrival of CRU members, Village officers will relinquish the scene and the investigation (and the notification of next of kin as may be necessary) to the Montgomery County Police. All investigative steps—to include any SFSTs, PBTs, and any evidentiary breath or blood testing—will be done by or at the direction of CRU members.
- C. If the Village officer suspects that any of the drivers involved in the fatal (or life-threatening injury) collision is under the influence or impaired by alcohol or other substance(s), the Village officer shall inform ECC and CRU. The Village officer shall not conduct SFSTs, interviews or further process the suspect without authorization from a CRU supervisor or designee.

VI. CHARGING VIOLATIONS OF DWI/DUI LAWS

- A. An officer will place charges as follows:
 1. 0.08% BAC or higher
If the suspect takes a breath test with a result of 0.08% BAC or higher, officers shall place the following 3 charges from the Transportation Article of the Annotated Code of Maryland:
 - a. §21-902 (a) (1), driving under the influence of alcohol, and
 - b. §21-902 (a) (2), driving under the influence of alcohol per se, and
 - c. §21-902 (b), driving while impaired by alcohol.
 2. Below 0.08% BAC or no test
If the breath test results are below 0.08% BAC, or if there is not breath test, officers shall place the following 2 charges:
 - a. §21-902 (a) (1), driving under the influence of alcohol, and
 - b. §21-902 (b), driving while impaired by alcohol.
 3. Drugs or drug/alcohol combination
If an officer has probable cause to believe that

the suspect was driving while impaired by one or more drugs (including prescription drugs) or a combination of drugs and alcohol, the officer shall charge the suspect with §21-902 (c).

4. Impaired by CDS

If an officer has probable cause to believe that the suspect was driving while impaired by a controlled dangerous substance, the officer shall charge the suspect with 21-902 (d).

5. Under 21 alcohol restriction

If a Maryland licensee under 21 years old takes a breath test with results of 0.02% BAC or higher, officers shall charge the suspect with §16-113, violation of under 21 alcohol restriction.

- B. If a violator is arrested for driving while intoxicated and it is found that the subject has been previously convicted of DWI, the arresting officer should immediately forward a memorandum to the State's Attorney's Office requesting that the defendant be considered for repeat offender prosecution. (See MCP DD, Function Code 514.A for sample memorandum form MCP 562) A copy of the defendant's driving record, (computer print-out), will be attached to the memorandum.

VII. 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 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 officer will contact a CCVPD supervisor and inform the supervisor of all of the facts of the case. The supervisor will determine if an exigent circumstance exists consistent with the U.S. Supreme Court case of Mitchell v. Wisconsin (decided June 27, 2019) that would justify the warrantless collection of blood from the unconscious subject.
- C. If the supervisor determines that an exigency exists, the officer shall request a qualified medical person, using a blood alcohol collection kit approved by the State Toxicologist, to withdraw blood samples.
- D. If the supervisor determines that an exigency does not exist, or if the hospital staff refuses to obtain the blood sample without a search warrant, then a search warrant must be obtained prior to obtaining the blood sample.
- E. If the individual regains consciousness or otherwise becomes incapable of refusing the test prior to the withdrawal of blood, the investigating officer will

advise the individual of his rights via the DR-15.

- F. The investigating 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.

VIII. NOTIFICATION OF CHEMICAL TEST RESULTS

- A. Under Maryland law, Court 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 at the time of the test, but when a blood test is conducted, this is not possible.
- B. The MSP Chemical Test for Alcohol Unit will notify the arresting officer by mail of test results based upon submitted information from the MSP-34 form.
1. If the defendant resides or works within the Village the officer will notify the defendant of the blood test results by personally providing the defendant a copy of the test results.
 2. If the defendant lives or works outside the Village, the officer will make a reasonable attempt to have the defendant report to the Village Police Station and sign for the results. If this procedure is unsuccessful, the officer will mail the results to the defendant via registered mail, return receipt requested.
- C. Once the defendant is notified of the State's intent to proceed without the appearance of the technician, 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 period, or notified at all, the officer will relay this information to the State's Attorney assigned to the case, prior to trial. Otherwise, the results may be inadmissible once trial proceedings have started.

IX. RELEASE OF DEFENDANT

The arresting officer will ensure that the defendant has copies of any citation(s) issued, MSP 33, DR-15, and DR-15A if applicable.

- A. In situations where the defendant does not furnish satisfactory evidence of identity and the officer has reasonable grounds to believe that the defendant may not be the person he or she claims to be, the officer should take the defendant before the court commissioner for a pretrial release determination. The commissioner should be informed of the known facts as well as the grounds for the officer's doubts concerning the defendant's identity. The defendant may be required to furnish satisfactory evidence of

identity prior to release.

- B. Defendants will not be released in an intoxicated condition and allowed to walk home from the police station unless the officer has attempted all reasonable alternatives and/or the defendant has refused all offers of assistance. Once the defendant has signed the citation(s), the officer has no authority to detain the person.
- C. After being charged and processed, the defendant will be released by one of the following methods:
 - 1. Taken home by a spouse, relative, or friend.
 - 2. Picked up by taxicab (ensure that they have money or someone at the destination will pay for the taxi).
 - 3. Juvenile defendants **must** be released to a parent or guardian.

X. CHECKLIST

Summation of forms required in DWI/DUI cases:

- MVA DR-15 (Advice of Rights to Chemical Test)
- MVA DR-15A (Officer's Certification and Order of Suspension)
- MVA DR-102 (Certification of Police Officer, Test Result of 0.04% or more – Commercial Motor Vehicle) (if applicable)
- MVA DR-103 (Certification of Police Officer, Violation of Alcohol Restriction) (if applicable)
- MSP 33 – Results of Breath Test
- MSP 34 – Results of Breath Test
- Instrument Certification Letter
- Approval letter for simulation solution
- MSP 102 (PBT Advisement of Rights – if PBT used)
- DWI/DUI Arrest Report
- Maryland Uniform Complaint and Citation (as appropriate)
- Certified copy of defendant's driving record
- MCP 50 (Miranda Warnings)

- Arresting officers should maintain the above documents in a case file for court presentations.

This directive voids the previous version dated 7/15/2008.