



GENERAL ORDER OPS-04T TRAFFIC ARREST PROCEDURES

EFFECTIVE FEBRUARY 13, 2020

This General Order contains the following numbered sections:

- I. POLICY
- II. TRAFFIC OFFENSES
- III. ALCOHOL/DRUG RELATED TRAFFIC OFFENSES
- IV. SPECIAL CIRCUMSTANCES
- V. CANCELLATION

I. POLICY

All citizens have basic rights set forth in common law, statutory law, and the State and Federal Constitutions. Members of the Howard County Department of Police (HCPD) shall exercise the power of arrest in compliance with the laws of the United States and the State of Maryland.

II. TRAFFIC OFFENSES

A. Warrantless Arrest of an Adult for Traffic Offenses

- 1. A police officer may arrest a person without a warrant for a violation of the Maryland Transportation Article (TA), including any rule or regulation adopted under it, or for a violation of any traffic law or ordinance of any local authority of this State, if the person has committed or is committing the violation within the view or presence of the officer and the violation is any of the violations listed under TA §26-202 (Powers of Arrest) in the Maryland Transportation Article, listed in OPS-04T, Appendix A.¹
- 2. Officers shall not arrest a person for violating TA § 26-203 (Refusing to sign a citation).
 - a. In the event the violator refuses to sign a citation requiring a signature, the officer shall explain that a signature is not an admission of guilt, only an acknowledgment of receipt of the citation and a promise to either pay the citation or appear in court.
 - b. Officers may write a second citation for violation of TA § 26-203 and give the driver all appropriate copies of all citations simultaneously.
- 3. If the following criteria are met, an on-view custodial arrest shall NOT be made for a violation listed under TA § 26-202 of the Maryland Transportation Article:
 - a. The defendant's identity can be positively confirmed;
 - b. There are no more than two prior failures to appear (FTAs) on the defendant's driving record (this may be waived with supervisory approval);
 - c. The defendant signs all citations requiring signature;
 - d. The defendant resides in the State of Maryland;
 - e. The defendant has not been charged with the same offense within the past year (this may be waived with supervisory approval);
 - f. The violation being charged is not a fleeing and eluding charge or driving under the influence; and

¹ CALEA 61.1.2a

- g. The defendant signs the DC-CR-147 Notice to Appear for Preliminary Inquiry Form.
- 4. An on-view custodial arrest shall be made for a violation of TA §21-902 and the arrestee transported to an appropriate facility for chemical testing. After chemical testing has been completed or refused, the defendant may be released without a Commissioner's Hearing if the criteria outlined in Section III.G. are met.
- 5. A defendant charged with a violation listed under TA § 26-202 who is not transported to the Howard County Detention Center, or any must appear traffic offense not listed under TA § 26-202, shall be issued a DC-CR-147 Notice to Appear for Preliminary Inquiry Form and the officer shall complete an Incident Report. An Arrest Report shall NOT be completed.²
- 6. A defendant who does not meet the criteria listed under Section II.A.3 or is under arrest for a criminal offense or warrant shall be transported to the Howard County Detention Center for processing. Officers will complete the Arrest Report, the appropriate citations, and a Statement of Probable Cause, and present it to the violator prior to a Commissioner's hearing.³
- 7. Disposition of defendant's vehicle
 - a. If a person is arrested for a traffic violation and the vehicle is in the travel portion of the roadway, the officer may:
 - i. Move the vehicle to a safe location after obtaining the owner's permission;
 - ii. Have a licensed passenger move the vehicle to a desired location; or
 - iii. Tow the vehicle in accordance with Departmental policy.
 - b. If the vehicle is occupied by passengers when the defendant is arrested, the officer will attempt reasonable steps to arrange alternative transportation. A licensed passenger may drive the car from the scene with the driver's permission.
 - c. If the vehicle is on private property, applicable procedures may be found in General Order OPS-28, Traffic Services and Towing Procedures.
- 8. Court preparation for serious traffic cases.
 - a. If the subject has a Maryland license or the vehicle is registered in Maryland the State's Attorney's Office will obtain the copies that are admissible for court purposes. Officers may also obtain the certified copies by using an "Application for Certified Copy of Record." Requests may be made by mail, computer, or in person at the MVA office in Columbia.
 - b. A teletype request for compulsory insurance violation information must include the vehicle identification number or registration plate number, owner's name, and the control number.
 - c. Officers may contact the MVA Investigative Services Section for assistance in any traffic-related matter.

² CALEA 61.1.2a

³ CALEA 61.1.2b

III. ALCOHOL/DRUG RELATED TRAFFIC OFFENSES⁴

A. Test Procedures

1. Procedures for use of the Preliminary Breath Testing device (PBT) are as follows.
 - a. An officer may request a driver stopped for suspicion of driving while intoxicated or impaired to submit to a PBT after being advised of his rights in MSP form 102, "Advisement of Rights for Preliminary Breath Test." Requests for PBTs should be made after any field sobriety testing.
 - b. The PBT must be administered prior to arrest and the results may only be used to confirm probable cause established through field sobriety testing, and not as the sole basis to establish probable cause for arrest.
 - c. The PBT results will be given to the driver:
 - i. If the driver is released without arrest; or
 - ii. If the driver is arrested, but only after the driver either submits or refuses to submit to an evidentiary test of his breath or blood.
2. Preliminary Breath Test procedures
 - a. Only PBT equipment approved by the State Toxicologist, Office of the Chief Medical Examiner, and issued by the Department shall be used.
 - b. Only officers authorized by the State Toxicologist will be permitted to administer PBTs.
 - c. Each PBT device used to test suspected drinking drivers shall be checked once each month using a simulated 0.08g/210L alcohol reference solution. An approved operator shall perform this test.
 - i. The results of this test shall be recorded in the PBT Log (Form MSP 104) by the operator.
 - ii. The results of this test shall be recorded in the "Accused Name or Calibration Test" column as "Monthly Test".
 - iii. PBT devices that do not achieve a reading between 0.07 and 0.09 for PBT models displaying two (2) digits and between 0.072 and 0.088 for PBT models displaying three (3) digits shall be withdrawn from use and turned in to the Traffic Enforcement Section for re-calibration. After re-calibration, the results shall be recorded in the PBT Log with "Calibration Test" written in the "Accused Name or Calibration Test" column.
 - iv. All PBT tests conducted on suspected impaired drivers will be recorded in the PBT Log in the "Accused Name or Calibration Test" column. PBT operators will obtain the necessary information to complete the "Chemical Test Data" columns in the PBT Log.
 - v. An officer shall turn in a copy of the PBT Operator Log to the Traffic Enforcement Section by the 5th of each month for all tests conducted the previous month. PBT operators will maintain the original log sheet in their PBT Operator Log.

⁴CALEA 61.1.5a & 61.1.10

- vi. Supervisors of officers who are assigned PBTs shall conduct periodic inspections of the PBT Log to ensure compliance with the above requirements.

3. Intoximeter

- a. The Intoximeter test shall be administered in the designated area. If time and distance are limiting factors or if there is an equipment malfunction, the test may be given at the MSP Waterloo Barrack. Whenever possible, Department personnel will administer the test regardless of the facility used.
- b. Intoximeter equipment will only be operated by officers certified by the State Toxicologist. Operators shall conduct tests in accordance with procedures set forth by the State Toxicologist.
- c. The arresting officer or his designee must remain with the defendant during the twenty-minute waiting period prior to the test and witness the administration of the test.
- d. If the subject is injured and must be taken to the hospital, a breath test shall not be conducted.

4. Electronic Intoximeter Log

- a. When a DWI/DUI arrest is made or a DWI/DUI citation issued, officers are required to obtain a DWI number from the electronic Intoximeter log, which is located in the Intoximeter Room.
- b. Alcohol restriction violations will be recorded in the log only when an evidentiary test is administered.
- c. Results of the Intoximeter test will be entered at the time the breath test is conducted. Intoximeter operators will make an entry in their personal log as well. The Chemical Test Supervisor will log results of blood tests upon receipt of the analysis from MSP Pikesville.
- d. Officers must get a DUI number from the electronic Intoximeter Log on the date of arrest.
 - i. This is required whether the Defendant takes a breath test, refuses the test, or if the officer completes a blood test kit.
 - ii. Officers are not to wait for the return of the blood test results to obtain a DUI number.
- e. An entry (result/refusal) is required for all DWI/DUI arrests regardless of the type of test administered or refused.
- f. Officers must get a DUI number from the electronic Intoximeter Log on the date the Defendant is transported to the hospital and a blood test is mandated or requested, or a blood kit completed.
 - i. Officers shall not to wait for the return of the blood test results to obtain a DUI number.
 - ii. The electronic Intoximeter Coordinator of the Traffic Enforcement Section will add the blood test results into the Log once they are received.

5. Blood Tests

- a. Blood tests may only be used in the following circumstances with consent:
 - i. Injuries to the defendant require removal to a medical facility;
 - ii. The defendant cannot physically take a breath test (i.e. stoma, mouth wired shut, etc.); or
 - iii. The equipment or operator for administering the evidentiary test of breath is not available.
- b. A search warrant is required to obtain a blood test if:
 - i. The subject refuses to take a breath test where compelled to do so by law. This is limited to cases where the defendant is involved in a collision that results in death or serious bodily injury.
 - ii. A reasonable amount of force may be used to compel such a test. Officers confronted with an uncooperative subject shall contact their supervisor for assistance.
- c. Unconscious Subjects: When an operator of a motor vehicle is unconscious or otherwise incapable of refusing to take an evidentiary test for alcohol and reasonable grounds exists to believe that they have been driving or attempting to drive a motor vehicle while under the influence, the investigating officer will:
 - i. Obtain prompt medical attention for the individual and, if necessary, arrange for transportation to the nearest medical facility.
 - ii. Make a good faith effort to get a search and seizure warrant for the subject's blood. If a search and seizure warrant cannot be obtained before the 2-hour time limit and if a blood test for alcohol will not jeopardize the individual's health or wellbeing, the officer will direct a qualified medical person to withdraw blood for a chemical test for alcohol to determine the alcohol content of the individual's blood. The consent form will be completed and the word "unconscious" written where the defendant's signature would normally be placed. The good faith effort to obtain a search and seizure warrant and the reason for not being able to obtain one shall be documented in the incident report.
 - iii. 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 the DR-15 Rights. (TA § 16-205.1.)
- d. Officers shall make every effort to obtain toxicology results from either a State Toxicologist approved breath test or blood kit. However, as a last result officers may subpoena toxicology results by sending an email to the State's Attorney's Office with the following information:
 - i. Officer's name, work address, work phone, and fax number.
 - ii. Subject's full name; DOB; SSN, if possible; treating hospital; hospital address if other than HCGH or Shock Trauma; and hospital phone number.
 - iii. Case Number, date, and time.

- e. Blood kits are available at Howard County General Hospital. If the test sample will be collected outside of Howard County, a test kit may be obtained in the Watch Commanders' office.
 - i. Only authorized blood collection kits will be used. Officers shall check the expiration dated on the kit prior to use. Expired kits will not be used.
 - ii. Blood samples will be collected only by qualified medical personnel. The arresting officer must witness the withdrawal of blood and take custody of the containers.
 - iii. The arresting officer will follow the directions inside the test kit, complete the MSP Form 34, place it inside the mailing box of the test kit, and forward to TES for review and submission to MSP.

B. Alcohol Restriction Violations/Charges⁵

- 1. Everyone under twenty-one (21) years of age has an alcohol restriction imposed on their driver's license.
- 2. If the evidentiary test indicates a reading of .02 or greater and the defendant has been arrested for an alcohol restriction violation, he may be charged with TA § 16-113.
- 3. If the evidentiary test indicates a reading of .01, the defendant may be charged with TA § 16-113 if independent evidence supports the charge.
- 4. If the arrestee refuses the evidentiary test, the arresting officer shall charge the arrestee with the alcohol restriction violation and complete Form DR-15A.

C. DWI/DUI Charges

- 1. The arrestee should be offered an evidentiary test before being formally charged with violations of TA § 21-902.
- 2. If the evidentiary test indicates a reading of less than .05, the arrestee shall not be charged with TA § 21-902 unless:
 - a. A Drug Influence Examination is administered by a DRE who determines the arrestee is impaired by drugs or CDS.
 - b. If a DRE is not available, then the arresting officer may charge the arrestee if they have the following:
 - i. There is physical evidence of the use of drugs or CDS;
 - ii. The arrestee admits consuming prescription drugs or CDS; or
 - iii. Sufficient probable cause is developed which indicates the arrestee's physical condition manifests a gross physical impairment caused by CDS or prescription drugs.
- 3. If the evidentiary test indicates a reading of less than .05 and the arrestee is not charged with TA § 21-902, the officer shall:
 - a. Charge the arrestee with initial offense observed, if any;

⁵ CALEA 61.1.5a

- b. Explain to the arrestee that the arrest was based on probable cause, that the evidentiary test gives an accurate indication of alcohol, and that because of the low reading indicated, the arrestee will be released without prosecution for TA § 21-902; and;
 - c. Complete the required paperwork for a DWI arrest.
- 4. If the arrestee refused the evidentiary test, the arresting officer shall charge the arrestee with the appropriate violation under TA § 21-902.
 - 5. To avoid double jeopardy issues, negligent driving or reckless driving shall not be charged for any personal injury collision where alcohol is involved.
- D. Arrest Procedures for Driving While Under the Influence of Drugs or Alcohol - In accordance with TA §§ 16-205.1 and 21-902, officers shall use the following procedures when making an arrest for alcohol/drug related traffic offenses.⁶
- 1. Initial Contact
 - a. An officer observing a DWI/DUI violation or detecting an alcohol restriction violation will arrest the person as soon as possible after probable cause has been established.
 - b. The advice of Miranda rights is not necessary until the defendant is in custody and the officer requests information beyond identification.
 - c. The arresting officer will read the defendant form DR-15 "Advice of Rights to a Chemical Test."
 - d. If the defendant agrees to submit to an evidentiary test for alcohol, the arresting officer has two (2) hours from the time of arrest to have the test administered.
 - i. The arresting officer must observe the defendant for 20 minutes before an Intoximeter test can be administered.
 - ii. The defendant shall be kept under observation at all times and will not be allowed to eat, drink, or smoke from time of arrest and for a minimum of 20 minutes prior to a breath test.
 - iii. A defendant is entitled to request and communicate with an attorney prior to taking the test. The attorney may contact the defendant at the test facility.
 - a) All attorney-client contacts prior to a Departmentally-administered evidentiary test will be conducted in the sight of the arresting officer.
 - b) The attorney is subject to a search and any containers will be checked for weapons, tools of escape, and contraband consistent with General Order OPS-73, Temporary Detention Procedures.
 - c) The attorney and his client will be afforded a place of privacy inside the Detention Area to confer. Confidential conversation between attorney and defendant does not eliminate the requirement of continued visual contact by the arresting officer.

⁶ CALEA 61.1.2a & 61.1.5a

- d) An attorney will only be permitted to administer a breath test when it will not substantially interfere with the timely and effective administration of the Department's testing procedures and will not negate the two-hour limit mandated by state law.
 - iv. If a defendant requires any prescription medication, the following procedures will be utilized:
 - a) Advise the defendant that if the taking of the medication causes the two-hour time limit to expire, the action will be considered a test refusal and may result in the suspension of the defendant's license. The defendant may present medical evidence substantiating the need for medication at the MVA hearing to rebut this action.
 - b) If the defendant still wants the medication, the officer shall afford an opportunity to take the medication, wait 20 minutes, and then conduct the test. If the time limit expires the officer shall process the defendant for refusing the test.
 - c) If any medication is taken, the arresting officer will include in his report the time, type, and amount of medication taken.
 - e. If the defendant refuses to submit to an evidentiary test for alcohol or has a reading of 0.08 or more, the arresting officer must complete the DR-15A "Officer's Certification and Order of Suspension," and mail the appropriate copy to the Motor Vehicle Administration within 72 hours.
- E. When the level of impairment of a person for arrested DWI/DUI appears inconsistent with the blood alcohol concentration the arresting officer shall utilize a Drug Recognition Expert (DRE), consistent with General Order OPS-41, Drug Recognition Expert.
- F. Fatal Accidents
 - 1. If a driver is involved in a motor vehicle accident that results in the death of or life threatening injuries to another person 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 under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, the person shall be required to submit to a test, as directed by the officer (TA § 16-205.1).
 - a. If the Intoximeter test is appropriate, the officer will follow the procedures previously set forth in this Order. Refusal of the detained person to cooperate will require transport to the hospital for a blood test. See Section III.A.5 of this General Order regarding blood tests.
 - b. If the blood test is necessary the officer will obtain a search warrant and witness the withdrawal of blood and follow the procedures for blood testing previously set forth in this General Order.
 - 2. If the operator of a motor vehicle dies because of injuries sustained in an automobile accident, the investigating officer will request the Deputy Medical Examiner to respond to the scene.
 - a. With permission of the Medical Examiner, the designated body removal service will take custody of the body and transport it to the morgue.

- b. As a matter of policy, the Deputy Medical Examiner will take a blood sample and report the blood analysis to the investigating officer.

G. Release Procedures

- 1. Officers may release DWI/alcohol restriction arrestees without a Commissioner's Hearing if the arrestee meets the following criteria:⁷
 - a. The individual's identity can be verified;
 - b. The individual resides in the state of Maryland;
 - c. There are no more than two (2) prior Failures to Appear (FTA's) on the defendant's driving record or criminal record (this may be waived with supervisory approval);
 - d. The defendant has no prior alcohol-related traffic arrests (this may be waived with supervisory approval);
 - e. The defendant has signed all citations requiring signature;
 - f. The defendant signs the DC-CR-147 Notice to Appear for Preliminary Inquiry Form and understands he is prohibited from driving a motor vehicle for twelve (12) hours after his arrest.
- 2. Defendants not meeting the above criteria shall be transported to the Central Booking Facilities as soon as practical in accordance with current transport procedures. Officers, in addition to completing the Arrest Report and the appropriate citations, must complete a Statement of Probable Cause prior to the defendant being transported to the Commissioner's Office.

IV. **SPECIAL CIRCUMSTANCES**

- A. If a traffic arrest involves a foreign national, including a person with diplomatic immunity, refer to General Order OPS-10, Foreign Nationals, for additional guidance.
- B. For traffic arrests involving military personnel, law enforcement officers, mail carriers, legislators, or correctional employees, refer to General Order OPS-04A, Adult Arrest Procedures, for additional guidance and procedures.

V. **CANCELLATION**

This General Order, in conjunction with OPS-04A, Adult Arrest Procedures, and OPS-04J, Juvenile Arrest and Contact Procedures, cancels and replaces General Order OPS-04, Arrest Procedures, dated October 10, 2012.

AUTHORITY:



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⁷ CALEA 1.2.7