



POLICE DEPARTMENT

**DRIVING IMPAIRED &
UNDER THE
INFLUENCE**

**OPERATIONAL
PROCEDURE #444**

Responsible Executive:
Chief of Police
Responsible Office:
Vice President for Public Safety
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Policy Statement

Drivers impaired by alcohol and/or other drugs represent a serious threat to the lives and safety of persons using the streets in the Johns Hopkins community. A comprehensive, coordinated, and ongoing approach involving education, enforcement, adjudication, treatment, and public support is essential to have long-term success in combating the problem of driving while impaired (DWI) or driving under the influence (DUI).

Enforcement is one of the key elements in any effective DUI/DWI approach. If law enforcement officers do not detect and apprehend impaired drivers, efforts to reduce DUI/DWI-related accidents will fail. At the same time, when arresting and charging drivers per this Directive, Johns Hopkins Police Department (JHPD) officers must ensure that sufficient probable cause exists to support such charges. Any test for alcohol concentration, whether of breath or blood, shall not be the sole basis for arrest and charging but shall be based on probable cause supported by the officer’s observations of the driver, the driver’s operation of a vehicle or vessel, and the results of any field sobriety testing that may be conducted.

Who Is Governed by This Policy

This Directive governs all bureaus, sections, and their members, including sworn, nonsworn, and contractual or voluntary persons in service with JHPD.

Purpose

The purpose of this Directive is to establish policy, procedures, and guidelines for JHPD officers to detect and investigate DUI/DWI.

Definitions

Alcohol:	Any substance or substances containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol. (MD Code, Transportation, § 11-103.1)
Alcoholic Beverage:	Any spirituous, vinous, malt, or fermented liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for beverage purpose. (MD Code, Alcoholic Beverages, § 1-101)
Competent Evidence:	Legally admissible evidence that tends to prove a particular allegation. In DUI/DWI enforcement, competent evidence can include an officer's observations of illegal, unsafe, or unusual operation of a vehicle. Signs of intoxication, impairment in a driver's speech, physical appearance, and results of standardized field sobriety tests (SFSTs) are considered signs of competent evidence as well.
Drug Recognition Expert (DRE):	A law enforcement member with specialized training who has been nationally certified to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol, and to identify the category or categories of drug(s) causing the impairment.
Implied Consent:	Any person who drives or attempts to drive a vehicle, including a commercial vehicle, on a highway or on any private property used by the public in general is deemed to have consented to take, as appropriate, either a test of breath or blood to determine alcohol concentration when an officer has reasonable grounds to believe the person is impaired by alcohol, a controlled dangerous substance, or any combination thereof. Officers should note that a person may not be compelled to take either test for alcohol concentration, except in a case where the person is involved in a collision that results in the death of, or life-threatening injury to, another person.
Member:	All members of the JHPD, including employees, officers, and volunteers, unless the term is otherwise qualified (e.g., member of the public, member of the Baltimore Police Department, etc.).
Officer:	All sworn police officers, at any rank, as defined by MD Code, Public Safety, § 3-201, in service with the JHPD.

Per Se:	A legal phrase meaning an act is inherently illegal. As applied to DUI/DWI enforcement, “per se” refers to occasions where certified testing of a sample of a person’s blood or breath reveals an alcohol concentration greater than or equal to that specifically stated in the law.
Standardized Field Sobriety Tests (SFST):	A set of three tests administered to a person by a law enforcement member and evaluated in a standardized manner to obtain validated indicators of impairment and assist in establishing probable cause for arrest. The three tests are horizontal gaze nystagmus, walk-and-turn, and one-leg stand.

Policy

It is the policy of the JHPD to take appropriate enforcement actions against drivers who are impaired or under the influence. These measures may include observing roadways to determine the characteristics of impaired drivers and enforcing the DUI/DWI sections of the Maryland Transportation Code through the arrest and expeditious processing of violators.

Core Principles

- I. **Constitutional Stops:** Officers may conduct a brief vehicle stop for a traffic violation when the officer has probable cause to believe that the driver has committed a traffic violation. The stop may last no longer than the time reasonably required to issue a citation for the violation, which includes the time to run the necessary license, computer, and warrant checks. If the officer has reasonable articulable suspicion of a DUI or DWI, the stop may last as long as necessary for a reasonable officer to establish or dispel the reasonable articulable suspicion of the DUI or DWI. All traffic stops must be made in accordance with JHPD Directive #409, Field Interviews, Investigative Stops & Pat-Downs, and JHPD Directive #442, Traffic Control & Enforcement.
- II. **Procedural Justice:** Procedural justice refers to the perception of fairness in an encounter. Officers shall treat all persons with dignity and respect, give persons a voice during encounters, be impartial in their decision-making, and convey trustworthy motives.
- III. **Nondiscriminatory Policing:** Officers shall not consider demographic category (including but not limited to race, ethnicity, national origin, religion, gender, sexual orientation, age, disability, gender identity or expression, or affiliation with any similar identifiable group) as a factor in initiating or conducting a vehicle stop. See JHPD Directive #106, Fair & Impartial Policing.
- IV. **Public Safety Purpose:** Officers shall engage in DUI/DWI enforcement for public safety purposes and not for the purposes of making an arrest. Consistent with the prohibited actions for investigative stops and the JHPD’s community policing priorities, officers may not target specific locations or drivers to establish reasonable articulable suspicion for a stop.

Procedures

I. **DUI/DWI Strategy** (Commission on Accreditation for Law Enforcement Agencies (CALEA) 61.1.9)

- A. A comprehensive, coordinated, and ongoing approach involving education, enforcement, adjudication, treatment, and public support is essential for addressing drivers impaired by drugs and/or alcohol.
- B. Various combinations of the following approaches may be used by the JHPD as part of its DUI/DWI enforcement efforts:
- Reviewing traffic enforcement and accident data to determine the campus areas with the highest concentrations of alcohol- and drug-related motor vehicle accidents.
 - Engaging in the selective assignment of officers at particular times and/or locations where analyses have shown there are a significant number of violations and/or accidents involving impaired drivers.
 - Selectively surveilling roadways on which there have been an unusually high number of DUI/DWI collisions to ascertain the characteristic violation profile of impaired drivers.
 - Conducting selected alcohol-related collision investigations and analyses of findings.
 - Enforcing impaired-driving laws through concentration on existing laws and the expeditious processing of violators.
 - Contacting the Baltimore Police Department (BPD) and other allied agencies to provide assistance as needed.
 - Providing information on alcohol- and drug-related traffic laws to interested Johns Hopkins parties.
 - Regularly evaluating enforcement programs to analyze results and inform plans for future initiatives.
 - Ensuring that officers are trained on how to detect signs of alcohol and/or drug impairment in all contact with motorists.

II. **DUI/DWI Stops**

- A. The stopping of any vehicle by a JHPD officer is considered a vehicle stop, which is a seizure under the Fourth Amendment and therefore is subject to constitutional limitations.
- The stop shall only last as long as necessary for a reasonable officer to establish or dispel reasonable articulable suspicion of a DUI or DWI, to issue a citation for the violation if warranted, and to run the necessary license, computer, and warrant checks.

- If, after the stop, the officer develops reasonable articulable suspicion of criminal activity, the officer may extend the stop until reasonable articulable suspicion is either confirmed or dispelled.
- All stops must be made in accordance with JHPD Directive #409, Field Interviews, Investigative Stops & Pat-Downs, and JHPD Directive #442, Traffic Control & Enforcement.

NOTE: As with any traffic stop, the officer must activate their body-worn camera (BWC)/in-car camera system at the onset of the interaction and shall not deactivate the BWC until the completion of the stop or arrest. See JHPD Directive #433, Body-Worn Cameras, and JHPD Directive #438, In-Car Camera System.

B. Officers shall take the following steps when stopping a vehicle based on suspected impairment:

- Avoid following the vehicle for a prolonged period of time and make the vehicle stop in a safe, well-lit place.
- Advise the JHPD Communications Center of the location and vehicle description.
- Approach the vehicle with caution.
- Obtain the driver's operator license.
- Do not allow the driver to move the vehicle once the driver is judged to be intoxicated. Ask the driver to turn off the vehicle.
- Interview the driver and passengers.
- Request the driver exit the vehicle and move to a safe location to conduct SFSTs.
- Select and administer appropriate SFSTs.
- Formulate appropriate arrest decisions based on accumulated evidence.

C. Establishing Probable Cause for Arrest

- Detection is the first step in any DUI/DWI enforcement action. In this stage, officers shall establish the probable cause necessary to place the driver under arrest.
- Probable cause requires facts and circumstances both that the person is operating the vehicle **and** that they are under the influence of alcohol or another substance.
- Elements contributing to probable cause can include:
 - Observations that a vehicle is being operated in an unusual or illegal manner, such as excessive speed, driving too

slowly, swerving, striking a fixed object, or making sudden starts and stops.

- Signs or physical indicators that the operator of a vehicle is impaired by or under the influence of alcohol, drugs, or other controlled dangerous substances (CDSs), such as stumbling, slurring, odor of alcohol, flushed face, bloodshot eyes, etc.
- Evidence observed within a vehicle while speaking with the driver, such as open alcoholic beverage containers or CDSs.
- The result of an SFST.
 - All officers will be trained in the use of the SFST as recommended by the National Highway Traffic Safety Administration.
 - The Education and Training supervisor will identify the SFSTs for use, as well as any approved alternate tests that officers may use when investigating DUI/DWI violations.

NOTE: No single element is sufficient for probable cause.

NOTE: The signs of alcohol or drug impairment are often similar to the symptoms of a health condition. For example, the symptoms of hypoglycemia in a person with diabetes can mimic the effects of intoxication. The officer should assess whether the person may have a health condition or be having a negative reaction to prescription medication that warrants medical attention.

- The Maryland Supreme Court has held that an intoxicated driver can be arrested for DUI/DWI violations even if the car is stopped or parked. (*Atkinson v. State*, 331 Md. 199 (Md. 1993))
 - Maryland law prohibits a person from driving or attempting to drive any vehicle while under the influence of drugs or alcohol. (MD Code, Transportation, § 21-902) The law defines “drive” as “to drive, operate, move, or be in actual physical control of a vehicle.” (MD Code, Transportation, § 11-114)
 - In *Atkinson*, the Maryland Supreme Court held that the following are factors for determining whether a driver is in actual physical control of the vehicle for the purpose of Maryland’s DUI/DWI law:
 - Was the vehicle running or the ignition on?
 - Where in the vehicle was the driver found (e.g., sitting at the steering wheel, asleep in the backseat, etc.)?
 - Was the driver awake or asleep?
 - Where were the keys? Were they in the ignition?
 - Were the vehicle’s headlights on?

- Was the vehicle legally parked, or located in the roadway?
- The court emphasized that no one factor alone will determine whether the driver was in actual physical control of the vehicle. Officers must instead consider each factor with an eye toward whether the driver was exercising control over the vehicle or merely using the vehicle as a temporary shelter.

D. Preliminary Breath Test (PBT)

- An officer who has reasonable grounds to believe that a person has been driving while under the influence of alcohol may, while in the field and prior to any arrest or citation, request the individual to submit to a PBT. (MD Code, Transportation, § 16-205.2)
- The PBT may be used as a tool in instances of suspected low BAC where a driver may be released if the PBT is sufficiently low. The PBT may also assist in cases where the driver may be under the influence of other drugs, as a very low or “00” reading for alcohol would raise suspicion of other drug influence.
- PBT results shall be used only as a guide to help determine whether enforcement action should be taken; however, they **shall not** be used to establish sole probable cause for arrest.
 - PBT results will not be included in the Statement of Probable Cause submitted by the officer.
- Only officers certified by the Maryland Toxicologist’s Office will deploy and use PBTs.
 - A copy of the certificate or PBT card must be on file with the training supervisor before operation.
- The officer must advise the driver that neither a refusal to take the test nor the taking of the test shall prevent or require a subsequent breath or blood test.
- PBTs should be administered only after field sobriety testing is completed and drivers consent to testing.
 - Officers will use the Maryland State Police (MSP) Form 102, Advisement of Rights for Preliminary Breath Test, to advise drivers of their PBT rights.
 - Two original MSP 102 forms will be completed. The case number will be written on each. One copy will be given to the driver, and the other will be submitted with other case-related paperwork for supervisory review.
 - The operator has no right to communicate with an attorney prior to deciding whether or not to take the PBT.

- Results will be given to drivers when they are:
 - Released without arrest, or
 - Arrested, but only after submission to, or refusal of, evidentiary breath or blood tests to determine alcohol concentration.
- Twenty minutes must elapse between the PBT and the administration of a breath test for alcohol. (Maryland Code of Regulations (COMAR) 10.35.02.08) This waiting period is to ensure that the driver does not eat, drink, smoke, or have any foreign substance in their mouth in order to avoid contaminating the breathalyzer's reading. (COMAR 10.35.02.08)
- The results of the PBT shall be used as a guide for the officer in deciding whether an arrest should be made and may not be used as evidence by the state in any court action. The results of the PBT may be used as evidence by a defendant in a court action. The taking of or refusal to submit to a PBT is not admissible as evidence in any court action. Any evidence pertaining to a PBT may not be used in a civil action. (MD Code, Transportation, § 16-205.2)
- Officers must complete MSP 104, Preliminary Breath Test Log, which is maintained in the squad room, as soon as practical after administering PBTs and prior to the end of the officer's tour of duty.
- PBTs are kept in the patrol supply cabinet when not deployed in the field. Members will not perform any repairs or make modifications to PBTs.
- The Patrol Commander will designate a PBT-certified officer to serve as the JHPD's PBT Coordinator. The coordinator's duties include but are not limited to:
 - Ensuring the agency's PBTs are tested at least once per month using required simulated alcohol reference solutions,
 - Ensuring out-of-calibration PBTs are taken out of service, recalibrated by certified personnel, and returned to service after being recalibrated,
 - Ensuring monthly routine tests and post-recalibration tests are entered in the PBT Test Log,
 - Working with the appropriate personnel to ensure the agency has adequate supplies of mouthpieces and the most current related MSP form versions, and
 - Completing and submitting MSP Form 34As, Alcohol Influence and PBT Use—Monthly Summary, to Central Records not later than the fifth day of every month.

- On-duty supervisors of PBT-certified officers will conduct inspections at the end of each shift of the PBT Test Log to ensure their subordinates are recording test information appropriately.

- The Records Management supervisor is responsible for ensuring that:
 - Completed MSP 34As are sent to the MSP no later than the 10th day of each month,
 - Originals of MSP 104s and copies of completed MSP 34As are retained by the agency for three years, and
 - Originals of MSP 102s are filed with the corresponding case files.

III. **Arrest & Processing** (CALEA 61.1.10)

- A. When sufficient probable cause exists that the driver was operating a vehicle while impaired or under the influence, the officer shall place the driver under arrest and an evidentiary test for alcohol will be offered in accordance with Maryland's Implied Consent Law. All arrests must be made in accordance with JHPD Directive #424, Arrests & Alternatives to Arrest.
- B. Officers shall note the time at which the arrest is made, for use in determining evidentiary breath or blood test time limits.
 - A breath alcohol test must be administered within **two hours of the time the arrest is made**.
 - A blood sample taken when only impairment by alcohol is suspected must be taken within **two hours of the time the arrest is made**.
 - A blood sample taken when impairment by drugs or CDSs is suspected must be collected from the driver **within four hours of the time the arrest is made**. This blood sample may only be ordered by a certified DRE.
- C. If there is a language barrier, officers shall request a qualified bilingual member to assist in providing language access. If one is not available, or if time constraints do not allow for one to arrive promptly, the officer shall use the Language Line Solutions interpretation service to communicate with the driver. See JHPD Directive #434, Language Access Services, for instructions on using Language Line Solutions.
- D. Officers shall determine if the driver has a valid driver's license and any open arrest warrants.
 - If the driver's privilege to drive is not valid (e.g., they have a State Soundex number identification only) or is suspended and revoked, note this information and refer to it later when completing Form DR-15A, Officer's Certification and Order of Suspension.
- E. **Medical Treatment**

- Officers shall provide medical treatment as necessary. Medical treatment must always take priority over investigative efforts.
- If the officer determines that a driver is so intoxicated that it constitutes a medical emergency (e.g., the driver cannot walk unassisted due to intoxication), the officer shall arrest the driver and transport them to the hospital in accordance with JHPD Directive #412, Custody, Transport & Processing.
- Enforcement efforts must not interfere with the prompt rendering of medical aid when an officer is assigned to handle a traffic collision or other traffic-related call for service, and in doing so makes observations that lead them to suspect an involved driver is driving while impaired or under the influence. Officers shall act in accordance with the requirements in JHPD Directive #443, Collision Investigations.
- If the driver indicates or the officer otherwise has reason to believe that the driver has a health condition impacting their impairment, including a possible adverse reaction to prescription medication, the officer shall seek immediate medical attention.
- Officers shall **not** conduct roadside sobriety tests if the driver's intoxication puts the driver in danger of injury due to falling.

NOTE: If the involved driver is transported to a hospital, a breath alcohol test may no longer be administered. Only a blood test may be administered, regardless of whether or not the driver is admitted to the hospital.

F. Vehicle Search and Processing

The arresting officer shall take the following steps with respect to the driver's vehicle:

- Search the vehicle for evidence relating to the DUI/DWI incident to arrest and in accordance with JHPD Directive #411, Search & Seizure.
- Arrange for the release of, or impounding of, the vehicle in accordance with JHPD Directive #446, Vehicle Towing & Storage.
 - With the driver's permission, the keys may be turned over to a sober passenger or other sober adult who has an ownership interest in the vehicle and possesses a valid driver's license.
 - The final decision regarding whether to tow the vehicle rests with the arresting officer/supervisor.
- Take reasonable steps to arrange alternative transportation for any passengers.

- If available, a backup unit may be used since the arresting officer's primary responsibility is processing the driver within the specified time limit.
 - Factors such as time of day, adverse weather conditions, location of arrest, age, and physical condition of the passengers should be used as guidelines when weighing the alternatives.
- G.** Officers shall transport the driver to a location that has been designated as the site where an evidentiary breath alcohol test will be administered, in accordance with JHPD Directive #412, Custody, Transport & Processing. This may be a BPD or JHPD site.

H. Advice of Rights to Chemical Test

During **all** arrests for alcohol- or drug-related violations involving the operation of a motor vehicle, except for the investigation of fatal or serious injury accidents, the officer will do the following:

- Read the entirety of Form DR-15, Advice of Rights, to the driver. Do not skip or shorten any sections. The form must be read word for word and the officer shall fill in any blanks.

NOTE: Any DUI/DWI processing involving collisions resulting in death or serious injury will require the officer to read only the Mandatory Test Section of the Advice of Rights to the driver.

- Give the driver an opportunity to sign the form, acknowledging receipt.

I. Request for Counsel Prior to Chemical Test

- If, after Form DR-15 has been read to the driver, the driver chooses to consult with an attorney prior to consenting to the breath alcohol test or DRE examination, the officer will allow the driver to consult with an attorney.
- The officer shall:
 - Note the time of the request,
 - Allow ample use of the telephone to the detained driver,
 - Note number of calls attempted,
 - Provide the Public Defender's phone number if the driver so requests, and
 - Notify the driver that delaying chemical tests to contact attorneys or have them present during testing could cause time limits to be exceeded and could be considered a refusal to take tests.

- This consultation can include an in-person meeting at the testing site with the attorney, and the attorney can actually administer an informal breath test to the driver with a device such as a PBT.
- Regardless of how the driver/attorney consultation occurs, it cannot interfere with the two-hour time limit. If the time limit expires due to the driver's request to consult with an attorney, or if the consultation itself continues long enough for the time limit to expire, either of these circumstances is considered a refusal.

J. Consent to Chemical Test

If the driver consents to the breath/blood test, the officer shall do the following:

- Have the driver sign where necessary on Form DR-15.
- Contact the BPD Crime Scene Science/Evidence Section or the police dispatcher and request a crime laboratory technician or certified breath test operator respond to administer the breath test.
- Request a DRE from the JHPD or BPD via the shift commander, Communications Center, if the officer believes the person is impaired by a substance other than alcohol.
- Remain with the driver and the breath test operator during the 20-minute waiting period prior to the test.
- Not allow the driver to eat, drink, smoke, or place anything in their mouth from the time of the arrest until after the chemical test has been administered.

K. Refusal to Consent to Chemical Test

If the driver refuses to consent to the breath/blood test, or if the driver appears unable to understand Form DR-15 due to their suspected level of intoxication/impairment and therefore cannot give a clear answer, the officer shall do the following:

- Consider either case to be a clear refusal.
- Attempt to have the driver sign where necessary on Form DR-15. If the driver refuses to sign, or if they are unable to sign, mark the form accordingly.
- Confiscate the Maryland driver's license if it is in the driver's possession.

NOTE: Arresting officers may **only** confiscate a Maryland driver's license. A driver's license issued by any other state, territory, etc. may not be confiscated.

- Complete Form DR-15A, Officer's Certification and Order of Suspension.

- If the driver does not have their Maryland driver's license at the time of arrest, ensure that the sections entitled Surrender of Driver's License and Driver's Certified Statement on Form DR-15A are completed properly.
- Record the "control number" printed at the top right of Form DR-15A on the appropriate line at the bottom right of Form DR-15.
- Attempt to have the driver sign where necessary on Form DR-15A. Consider the following to determine whether the driver will be issued a temporary driver's license:
 - If the driver is willing to sign Form DR-15A as directed, and the officer has verified they have a valid driver's license, both the officer and the driver must sign where indicated under the section entitled Temporary Driver's License on Form DR-15A.
 - If the driver refuses to sign Form DR-15A **or** if the officer has determined that the driver does not have a valid driver's license, do not issue a temporary driver's license.
 - If the driver's suspected level of intoxication/impairment leaves them unable to sign, consider this a refusal to sign.

NOTE: Do not issue a temporary driver's license via Form DR-15A if the driver's license is not valid or is suspended and/or revoked.

The arresting officer shall distribute copies of the various forms as follows:

- Give the driver the "driver" copy of both Form DR-15 and Form DR-15A. If they meet the criteria described, the "driver" copy of Form DR-15A will serve as their Temporary Driver's License.
- Make a copy of Form DR-15 for the case folder.
- Place the following documents in the DWI REFUSAL tray at the testing site:
 - White copy of Officer's Observation Report
 - Officer copy of Form DR-15, Advice of Rights
 - Law enforcement copy of Form DR-15A, Officer's Certification and Order of Suspension
- Place the following documents into the postage-paid envelope attached to the back of the Form DR-15A packet:
 - The driver's Maryland driver's license, if one was confiscated
 - The Motor Vehicle Administration (MVA) copy of Form DR-15, Advice of Rights

- The MVA copy of Form DR-15A, Officer's Certification and Order of Suspension
- Immediately following the completion of the DUI/DWI process, deposit the envelope in any U.S. Postal Service mailbox.

L. Withdrawal of Refusal to Consent

A driver who initially refuses to consent to a breath or blood test may withdraw that refusal. Officers must provide the driver an opportunity to submit to the test, so long as the withdrawal meets all of the following criteria:

- The withdrawal is unequivocal and made by the driver alone.
- The withdrawal is not made at the insistence of, or upon the advice of, any JHPD member.
- The withdrawal is made while the driver is still in the custody of the officer, but not at a time where operational priorities of the JHPD will be unreasonably impacted.
- The withdrawal does not interfere with the timely and functional administration of any test. Factors that define timely and functional can include:
 - Whether a certified breath test operator is still available to administer the test,
 - Whether the testing equipment is available,
 - Whether the delay between the driver's initial refusal and subsequent withdrawal of that refusal has, or will, interfere with the administration of any test to another driver suspected of a DUI/DWI, and
 - Whether the delay between the driver's initial refusal and subsequent withdrawal of that refusal has, or will, unreasonably interfere with other duties and assignments of the officer, the certified breath test operator, or any technician who must administer any test.
- The driver may not withdraw their initial refusal if so much time has elapsed since they were taken into custody that:
 - Any required testing or evaluation cannot be completed within two hours for a breath test and four hours for a blood test, and/or
 - Any required breath and/or blood samples cannot be collected within the time limits established by law.

NOTE: Officers should consult with the BPD Crime Laboratory Technician or a certified breath test operator in any case where there is a question of sufficient time remaining to honor a driver's withdrawal of their initial refusal.

- If a driver withdraws their initial refusal after Form DR-15 and Form DR-15A have been marked as “refused,” and it is possible to administer the appropriate tests, the officer will:
 - Draw one single line through the refusal blocks on each form,
 - Check the appropriate blocks to indicate the driver has consented to the testing, and
 - Write their initials next to the changed portions on each form.

M. Access to Medications

- No driver will be allowed access to medicine, even if it is part of the driver’s property.
- If a medical emergency exists, or if the driver claims a medical emergency will occur if they are not immediately provided with their medications, agency personnel will notify the JHPD Communications Center and request assistance from Emergency Medical Services (EMS) personnel for the decision to administer any medications.
- If the driver is suffering life-threatening conditions (e.g., chest pains, asthma, etc.) and has possession of prescribed medicine, an officer will advise EMS personnel of its existence, the contents of the label, and the driver’s symptoms.
 - The officer will follow EMS instructions regarding administration of the medicine. Any remaining medication will be turned over to EMS personnel.
- If the driver is transported to a medical facility, the test performed will be a blood test.
- If the driver does not require transportation to a medical facility, officers must observe the driver for 20 minutes after the medications are taken prior to administering the chemical test.
 - This should be done even if the required treatment causes the two-hour time limit to elapse. The circumstances of the refusal and the tests conducted will be evaluated on a case-by-case basis.

N. Issuing Citations

- The officer shall issue all appropriate citations in accordance with Sections IV and V of this Directive and with JHPD Directive #442, Traffic Control & Enforcement.
- Officers have full discretion to charge the driver with either DUI or DWI regardless of the results of the breath test. Officers should

consider the following elements when evaluating what charges will apply:

- Did the violation involve only alcohol?
- Did the violation involve a combination of alcohol and drugs and/or CDSs?
- Was the driver transporting a minor at the time of the violation?
- Mark all citations as “must appear” and either have the driver sign each one or mark the bottom of each as “defendant arrested.”
- When the driver is operating the vehicle under the influence of drugs or CDSs, officers must consult the DRE for proper charging citations based on the DRE’s evaluation.

NOTE: If the driver refused to submit to a breath/blood test, the driver cannot be charged under MD Code, Transportation, § 21-902(a)2, Driving/attempting to drive vehicle while under the influence of alcohol per se. This “per se” violation requires that the driver submit to an alcohol concentration test and the test produce a result of 0.08 or higher.

IV. Breath Alcohol Tests

- A. A breath alcohol test must be administered within **two hours of the time the arrest is made.**
- B. Breath alcohol tests may only be administered at the direction of an officer by a qualified person who:
 - Has received training in the use of the equipment in a training program approved by the toxicologist in the Department of State Police Forensic Sciences Division, and
 - Is a police officer, a police employee, or a person authorized by the toxicologist in the Department of State Police Forensic Sciences Division. (MD Code, Courts and Judicial Proceedings, § 10-304)

NOTE: The arresting officer may not administer the breath test under Maryland law.
- C. The Operations Bureau Commander or designee shall ensure that any equipment used for collecting and analyzing breath samples is properly serviced and tested, and that service/testing records are properly maintained.
 - Officers obtaining a breath sample should monitor the equipment for signs of malfunction and note any problems in the appropriate report. Officers should promptly report any problems to the shift supervisor.

D. Breath Alcohol Test Result Is 0.08 or Higher

If a driver consents to a breath alcohol test that reveals a blood alcohol content (BAC) of 0.08 or higher, the officer shall do the following:

- Ensure the certified test operator who administered the test:
 - Completes the entire section entitled Certification of Test Technician or Analyst on Form DR-15A, to include their signature,
 - Completes their portions of MSP Form 33, Notification to Defendant of Result of Test for Alcohol Concentration, and
 - Records the Central Complaint Number at the top right of MSP Form 33.
- Complete the remainder of Form DR-15A.
- Confiscate the driver's operating license if they have one in their possession and it is a license issued by the State of Maryland.
- Determine whether the driver is eligible for a temporary driver's license. If a driver does not have a valid license, or their license is suspended/revoked, they are not eligible.
- If the driver is eligible for a temporary driver's license:
 - Have the driver sign the appropriate line on Form DR-15A or, if the driver refuses to sign, mark "refused" and do not issue a temporary license,
 - Provide the driver the "driver" copy of the form and explain it will serve as their temporary license, and
 - Copy the control number printed at the top right of Form DR-15A onto the appropriate line at the bottom right of Form DR-15.
- Issue each of the following traffic citations under MD Code, Transportation:
 - § 21-902(a)(1): Driving/attempting to drive vehicle while under the influence of alcohol
 - § 21-902(a)(2): Driving/attempting to drive vehicle under the influence of alcohol per se
 - § 21-902(b)(1): Driving/attempting to drive vehicle while impaired by alcohol
 - § 16-113(h): Driving vehicle in violation of restricted license requirement **if** the driver's age is 18–20
 - Any other related citations from §21-902 that may apply

- Plus, if applicable, any citation for any moving violation that may have provided an original justification for stopping the driver
- Record the number of the primary citation on both Form DR-15A and MSP Form 33.
- Place the following documents into the postage-paid envelope attached to the back of the Form DR-15A packet:
 - MVA copy of Form DR-15
 - MVA copy of Form DR-15A
 - MVA copy of MSP Form 33
 - If applicable, any confiscated Maryland driver's license
- Immediately following the completion of the DUI/DWI process, apply appropriate postage and deposit the envelope in any U.S. Postal Service mailbox.
- Make or retain copies of all DUI/DWI-related forms, test results, etc., for the case file. Release to the operator of the testing equipment any copies that they request.
- Transport the driver to Baltimore Central Booking and Intake Facility (BCBIF) or follow the procedures outlined in Section VII of this Directive regarding discretionary release of DUI/DWI violators.

E. Breath Alcohol Test Result Is 0.07

If a driver consents to a breath alcohol test that reveals a BAC of 0.07, Form DR-15A is not needed. Officers shall do the following:

- On the bottom right of Form DR-15, write "N/A" on the line entitled DR-15A Control #.
- If the driver holds a Maryland driver's license, that license is not subject to a DUI/DWI-related confiscation.
- Ensure the certified breath test operator who administered the test:
 - Completes their portions of MSP Form 33, Notification to Defendant of Result of Test for Alcohol Concentration, and
 - Records the Central Complaint Number at the top right of MSP Form 33.
- Make or retain copies of all DUI/DWI-related forms, test results, etc., for the case folder. Release to the operator of the testing equipment any copies they request.
- Issue each of the following traffic citations under MD Code, Transportation:

- § 21-902(a)(1): Driving/attempting to drive vehicle while under the influence of alcohol
 - § 21-902(b)(1): Driving/attempting to drive vehicle while impaired by alcohol
 - § 16-113(h): Driving vehicle in violation of restricted license requirement **if** the driver's age is 18–20
 - Any other related citations from §21-902 that may apply
 - Plus, if applicable, any citation for any moving violation that may have provided an original justification for stopping the driver
- Record the number of the primary citation on MSP Form 33.
 - Transport the driver to BCBIF, or follow the procedures outlined in Section VII of this Directive regarding discretionary release of DUI/DWI violators.

F. Breath Alcohol Test Result Is 0.02–0.06 and Only Alcohol Is Suspected

If the BAC is between 0.02 and 0.06, and the officer believes alcohol is the only cause of the driver's impairment:

- The driver may still be charged with DUI/DWI violations.
- The officer will consider other competent evidence in determining whether the driver was impaired or under the influence of alcohol, including observations made during administration of SFSTs, physical evidence observed at the scene, and information recorded on the Officer's Observation Report.
- The officer's ability to articulate this competent evidence both in a Statement of Probable Cause and when testifying in court will be vital to their case.
- Issue citations for whatever DUI/DWI violations and other moving violations may be appropriate based on observations and competent evidence.

NOTE: The officer should err on the side of not charging in these cases and require some particularized facts that, given the low BAC, support the decision to arrest (such as public safety or observation of dangerous behaviors).

G. Breath Alcohol Test Result Is 0.00–0.06 and Drugs/CDSs Suspected

If the BAC is between 0.00 and 0.6 and the officer believes the driver is under the influence of prescription drugs/medication and/or CDSs:

- The officer shall request a DRE via the shift commander, Communications Section, as soon as possible.

NOTE: Officers should consider seeking the assistance of a DRE anytime a driver's breath alcohol test result seems to be inconsistent with the level of physical impairment displayed by the driver.

- A DRE must be able to perform their evaluation of the driver and obtain a blood sample within four hours of the time the driver was taken into custody.
- If a DRE is not available:
 - The shift commander, Communications Section, will attempt to locate an on-duty DRE in another jurisdiction, and
 - If a DRE is located in another jurisdiction, but they cannot respond to the officer's location, the officer is required to transport the driver to the out-of-jurisdiction location for the DRE and bloodwork.

NOTE: An arrest cannot be made unless a DRE responds and makes the determination of impairment based on probable cause, unless the officer can articulate clear signs of intoxication and physical evidence to support

the indication of substance use (e.g., presence of a pill bottle, needle, etc.). Officers shall engage in DUI/DWI enforcement for public safety purposes and not the purpose of making an arrest.

- Drivers tested by DREs and found to be under the influence of alcohol and/or drugs will be:
 - Transported to medical facilities for further evaluation and treatment, and
 - Subsequently charged, after consultation with State's Attorney's Office (SAO) personnel, with MD Code, Transportation, § 21-902(c), Driving while impaired by drugs or drugs/alcohol combination, **or** § 21-902(d), Driving while impaired by a CDS.
- Officers are responsible for all paperwork not related to the DRE examination.

NOTE: Officers shall consider possible health conditions and comply with JHPD Directive #412, Custody, Transport & Processing.

H. Breath Alcohol Test Result Is 0.27 or Higher

If a driver consents to a breath alcohol test that reveals a BAC of 0.27 or higher:

- Obtain one extra set of test result printouts from the certified breath test operator who administered the test.
- Have the driver transported to the nearest emergency room to be examined for potential alcohol poisoning.
- Provide the hospital staff with an extra set of test result printouts from the driver's breath alcohol test.
- Complete the remainder of the driver's processing in accordance with the procedures given in Section IV.D of this Directive.

V. Blood Alcohol Tests

- A. In most cases, the breath test for alcohol will be the test administered. In accordance with MD Code, Courts & Judicial Proceedings, § 10-305, the blood test shall be used only in the following circumstances:
- The driver is dead, unconscious, or otherwise incapable of refusing to take other tests to determine alcohol concentration.
 - Injuries to the driver require removal to a medical facility.
 - Breath test equipment is not available.
 - It is necessary to determine drug or CDS content.
 - The driver is required to submit to a test of one specimen of blood under MD Code, Transportation, § 16-205(c)(1)(ii).

- The driver is involved in a fatal or life-threatening collision involving alcohol/drugs and refuses to submit to a breath test.
- B.** A blood sample taken when only impairment by alcohol is suspected must be taken within **two hours of the time the arrest is made.**
- C.** A blood sample taken when impairment by drugs or CDSs is suspected must be collected from the driver **within four hours of the time the arrest is made.** This blood sample may only be ordered by a certified DRE in accordance with Section IV of this Directive.
- D.** Blood tests shall only be obtained at the direction of an officer by a qualified medical person who is permitted to withdraw blood from a human. (MD Code, Courts & Judicial Proceedings, § 10-304)
- If the officer testifies that the officer witnessed the taking of blood by a person who the officer reasonably believed was a qualified medical person, the officer's testimony shall be sufficient evidence that the person was a qualified medical person and that the blood was obtained in compliance with Maryland law, without testimony from the person who obtained the blood specimen.
- E.** All equipment used to obtain and test blood samples must be approved by the toxicologist in the Department of State Police Forensic Sciences Division. Testing must be done by a qualified person in a laboratory approved by the toxicologist. (MD Code, Courts & Judicial Proceedings, § 10-304)
- F.** If the driver cannot submit to a blood test because they have a bleeding disorder or have taken medication that inhibits coagulation, the driver will not be required to take the test.
- This will not be considered a refusal to take the test.
 - The driver may be required to complete another available and approved test as an alternative.
- G.** If a driver refuses a required blood test or becomes violent, the arresting officer will:
- Have efforts discontinued to obtain blood samples,
 - Document the circumstances in the DC/CR 4, and
 - Initiate Form DR-15A.
- H. Issuing Citations**
- Blood test defendants should initially be charged with MD Code, Transportation, §21-902(a)(1), Driving/attempting to drive vehicle while under the influence of alcohol.

- The arresting officer shall contact SAO personnel once the blood test results have been received. Upon advice of the SAO, officers may charge additionally with MD Code, Transportation, § 21-902(b), Driving/attempting to drive vehicle while impaired by alcohol.
- Drivers tested by DREs and found to be under the influence of alcohol and/or drugs will be:
 - Transported to medical facilities for further evaluation and treatment, and
 - Subsequently charged, after consultation with SAO personnel, with MD Code, Transportation, § 21-902(c), Driving while impaired by drugs or drugs/alcohol combination, **or** § 21-902(d), Driving while impaired by a CDS.

VI. Special Considerations

A. Drivers Who Are Dead or Unconscious

- In accordance with MD Code, Transportation, § 16-205.1(d)(1), if the driver is dead, unconscious, or otherwise incapable of refusing a test, and probable cause exists to make an arrest, the officer shall:
 - Obtain prompt medical attention for the person,
 - If necessary, arrange for removal of the person to a nearby medical facility, and
 - If a test would not jeopardize the health or well-being of the person, direct a qualified medical person to withdraw blood for a test.
- If the driver regains consciousness or otherwise becomes capable of refusing the test before the withdrawal of blood, the officer will read the driver the Advice of Rights (Form DR-15) and begin the process of obtaining consent.

B. Drivers Involved in Accidents With Fatal/Life-Threatening Injuries

- Per the Memorandum of Understanding (MOU) between the JHPD and BPD, dated December 2, 2022, BPD has primary jurisdiction for investigating all traffic collisions involving death or serious injuries. (See JHPD Directive #443, Collision Investigations.)
- Alcohol and/or drug testing of drivers under MD Code, Transportation, § 16-205.1(c)(1), for collisions with fatalities or serious injuries will be arranged for by BPD.

C. Commercial Vehicle Drivers

- All officers shall process the operator of a commercial vehicle in the same manner as any adult person operating or attempting to operate a vehicle while under the influence of alcohol, drug(s), and/or CDSs.
- If the driver submits to a breath alcohol test and the BAC is 0.08 or above, the officer shall complete the required paperwork and citations, and check all appropriate blocks relating to commercial vehicles and/or commercial driver's licenses.
- If the driver submits to a breath alcohol test and the BAC is 0.07, the officer and the certified breath test operator shall complete MVA Form DR-102, Certification of Police Officer Alcohol Test Result of 0.04 to 0.09 Commercial Motor Vehicle. The officer might issue the following citations under MD Code, Transportation:
 - § 21-902(a)(1): Driving/attempting to drive vehicle while under the influence of alcohol
 - § 21-902(b): Driving/attempting to drive vehicle while impaired by alcohol
- If the driver submits to a chemical test and the breath/blood alcohol content is between 0.04 and 0.07, the officer and the certified breath test operator shall complete MVA Form DR-102 and issue a citation for MD Code, Transportation, § 16-813(a), Individual driving, operating, or in physical control of commercial vehicle with any alcohol concentration in blood or breath.
- No person within four hours of going on duty, operating, or having physical control of a vehicle shall consume or possess an intoxicating beverage regardless of alcoholic content. (Motor Carrier Safety Inspection Regulations, MR 392.5(a))

D. Drivers Under Age 18

- Youth aged 16 and 17 will be treated as adults for the purposes of testing for intoxication.
- Youth aged 15 and younger who are suspected of driving under the influence of drugs and/or alcohol may be given chemical tests for intoxication if their parents or guardians give permission. In these situations:
 - Tests **will** be conducted if the parents/guardians cannot be contacted within two hours from the time arrests were made but the arrested youth agrees to submit to testing.
 - Tests **will not** be conducted if the youth refuses to submit to testing, regardless of parental or guardian permission or wishes.

- All JHPD member interactions with youth of any age must be in accordance with the requirements of JHPD Directive #426, Interactions with Youth.

E. Existing Alcohol Restriction on License

If a driver consents to a breath alcohol test that reveals a BAC of 0.02 or more and the driver has an existing alcohol restriction on their driver's license, officers shall:

- Carry out the procedure listed previously in this Directive for drivers' breath alcohol test results,
- Complete MVA Form DR-103, Certification of Police Officer Violation of Alcohol Restriction,
- Issue citations for whatever DUI/DWI violations apply, and
- Issue any citations from MD Code, Transportation, § 16-113, that may apply, considering the following:
 - § 16-113(h): Prohibits driving a vehicle in violation of any license restriction, which includes the alcohol restriction that all Maryland drivers under the age of 21 will have on their licenses.
 - § 16-113(j): Prohibits driving or attempting to drive a vehicle in violation of a court order prohibiting a driver from driving or attempting to drive with any alcohol in their blood. A driver with multiple previous DUI/DWI convictions, an Ignition Interlock Device, etc. might have this restriction.

VII. Discretionary Release of DUI/DWI Violators

- A.** Under most circumstances, officers have the discretion to release an adult driver upon issuance of the appropriate citations.
- Citation and release are encouraged in situations where there was no bodily injury or death and there is no ongoing risk to public safety.
 - If there is any doubt as to the advisability of releasing a particular driver, the driver shall not be released.
- B.** The following are factors that officers should consider when determining whether to make a custodial arrest of the driver:
- Whether the driver has a previous DUI/DWI conviction
 - Whether the driver is involved in a motor vehicle collision
 - Whether the driver's current mental and physical state poses a threat to public safety
- C.** An adult driver may be released if all the following criteria have been met:
- The identity of the driver is clearly established,

- The driver is mentally and physically suitable for release to a responsible and sober person,
- The driver has a responsible and sober adult able to respond in a timely manner to retrieve the driver,
- Both the driver and the responsible parties have been specifically cautioned against returning to the vehicle and allowing the driver to drive within 12 hours after the arrest, and
- The driver has been given copies of applicable forms, including the following:
 - Issued citations
 - MSP 33, Notification to Operator of Result of Test for Alcohol Concentration
 - MVA DR-15, Advice of Rights
 - MVA DR-15A, Officer's Certification and Order of Suspension
 - MVA DR-103, Violation of Alcohol Restrictions

NOTE: Once the driver has signed the citations, the officer has no authority to detain the person.

- D.** Youth drivers are **never** eligible for discretionary release and will always be processed through the Baltimore City Juvenile Justice Center in accordance with JHPD Directive #426, Interactions with Youth.
- E.** Officers shall complete the Discretionary Release of DWI/DUI Violators, in addition to any citations/reporting related to the incident in accordance with this Directive.
 - Provide the driver with copy 1 of Form 450.
 - Submit the second copy of Form 450 to the officer's supervisor with all related reporting.

VIII. Supervisor Responsibilities

- A. The arresting officer's supervisor shall:**
 - Ensure all reports and forms are accurately completed, and
 - Ensure all procedures are followed before youth are released to a parent or guardian.
- B. Commanding Officer, Patrol**
 - The Commander of the Patrol Bureau shall appoint a DRE Coordinator for the JHPD.
 - The DRE Coordinator shall be responsible for:

- Recruitment, training, scheduling, and certification of all JHPD DREs and their equipment, and
- Recruitment, training, and certification of all departmental SFSTs and their equipment and records.

IX. Officer Training

- A.** All officers shall receive training in DUI/DWI enforcement. This training should include the following:
- Identifying DUI/DWI drivers by characteristic driving behavior.
 - Identifying the physiological and behavioral signs of intoxication.
 - The proper administration of SFSTs.
 - Completion of required DUI/DWI reports, complaints, and citations.
- B.** Officers who are trained as breath analyzer operators shall receive special training and certification by the MSP.

Policy Enforcement

Enforcement	Police Department managers and supervisors are responsible for enforcing this Directive.
Reporting Violations	Suspected violations of this Directive should be reported to the Public Safety Accountability Unit.

Related Resources

University Policies and Documents
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<p>Conduct & Responsibility #106, Fair & Impartial Policing</p> <p>Operational Procedure #409, Field Interviews, Investigative Stops & Pat-Downs</p> <p>Operational Procedure #411, Search & Seizure</p> <p>Operational Procedure #412, Custody, Transport & Processing</p> <p>Operational Procedure #424, Arrests & Alternatives to Arrest</p> <p>Operational Procedure #426, Interactions with Youth</p> <p>Operational Procedure #433, Body-Worn Cameras</p> <p>Operational Procedure #434, Language Access Services</p> <p>Operational Procedure #438, In-Car Camera System</p> <p>Operational Procedure #442, Traffic Control & Enforcement</p> <p>Operational Procedure #443, Collision Investigations</p> <p>Operational Procedure #446, Vehicle Towing & Storage</p>
External Documentation
Police Department Forms and Systems
https://powerdms.com/ui/login

Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Policy Management	(667)306-8618	jhpdpolicyinquiry@jh.edu