

THURMONT POLICE DEPARTMENT

GENERAL ORDER	<i>Date Issued:</i> June 19, 2006	<i>Effective Date:</i> June 19, 2006	<i>Order No:</i> Chapter 35.2
<i>Authority: Chief of Police</i> <p style="text-align: center;"><i>Gregory L. Eyer</i></p>		<i>Manual</i>	
<i>Subject: ALCOHOL and or DRUG IMPAIRED DRIVER ENFORCEMENT</i>		<i>Replaces Page No:</i>	
<i>CALEA Standard:</i> Chapter 61	<i>Distribution:</i> ALL	<i>Amends:</i>	<i>Number Of Pages:</i> 14
<i>Related Documents:</i> Maryland Vehicle Code		<i>Rescinds:</i>	

I. PURPOSE:

The purpose of this order is to establish guidelines for the enforcement of all driving under the influence of alcohol and drug statutes.

II. POLICY:

It is the policy of the Thurmont Police Department to consider enforcement of the statutes regarding driving impaired by use of alcohol and/or drugs, a primary enforcement priority in overall traffic safety within the Town of Thurmont.

III. DEFINITIONS:

- D.U.I: Driving Under the Influence of Alcohol and/or Drugs
- B.A.C: Blood Alcohol Content
- D.R.E: Drug Recognition Expert
- P.B.T: Preliminary Breath Test
- M.S.P: Maryland State Police
- D.M.E: Deputy Medical Examiner
- C.T.A.U: Chemical Test for Alcohol Unit
- N.H.T.S.A: National Highway Traffic Safety Administration

IV. DWI/DUI Countermeasures

A. Drivers impaired by alcohol and/or other drugs represent a serious threat to the lives and safety of persons using the roadways of Frederick County and consequently a comprehensive, coordinated and ongoing countermeasures program involving education, enforcement, adjudication, treatment and public support is essential if a program is to have long term success in combating the DUI/DWI problem.

B. Enforcement is one of the key elements in the DUI/DWI countermeasures program. If the Thurmont Police Department does not detect and apprehend impaired drivers, the remaining portions of the system will not function.

1. Officers must be alert for signs of alcohol and/or other drug impairment in all contacts with motorists. After conducting an initial examination at the scene of the traffic contact and upon determining that probable cause to arrest is present, the officer will effect a physical arrest of the subject.

2. Chemical tests for alcohol will be offered in accordance with Maryland's Administrative Per Se Law (DR-15 Form).

3. Officers are reminded to establish sufficient probable cause using Standardized Field Sobriety Tests before affecting the arrest of a driver. Additional tests are permitted, but only after initial standardized sobriety tests have been performed.

4. All officers shall be trained to utilize the Standardized Field Sobriety Tests recommended by the National Highway Traffic Safety Administration (NHTSA).

V. PROCEDURE:

- I. In accordance with requirements of the Maryland Transportation Article Sections 16-205.1 and 21-902, officers of the Thurmont Police Department shall enforce all offenses of driving or attempting to drive a motor vehicle while under the influence of alcohol or other drugs.

II. The detection and arrest of impaired drivers differs from that of other traffic law violators. There are specific legal limits of impairment. Specific statutes govern driving while under the influence of alcohol or drugs and administrative Per Se Laws. This directive outlines the procedures to be followed by officers in the detection and arrest of persons operating or attempting to operate a motor vehicle while under the influence of alcohol or other drugs.

A. Detection is the first step in any DUI/DWI enforcement action. In this stage, probable cause to arrest is established. Detection includes the following steps:

1. Recognize and identify specific driving behaviors that signify the driver may be impaired by alcohol or other drugs.
2. Use caution in pursuing suspected impaired drivers and be alert for unpredictable reactions.
3. Avoid prolonged pursuit and apprehend as soon as practicable in a safe location.
4. Advise dispatch of location and vehicle description to include tag number.
5. Recognize and identify specific behaviors occurring during vehicle stops that provide evidence or suspicion that the driver may be under the influence or impaired.
6. Note all observations which led the officer to believe that the driver is DUI/DWI.
7. Do not allow the driver to move the vehicle once the driver is suspected to be impaired. Secure the keys to the vehicle when impairment is suspected.
8. Request the subject exit the vehicle and move to a safe location to conduct field sobriety tests. The three Standardized Field Sobriety Tests currently endorsed by NHTSA shall be administered in conjunction with any that the officer deems necessary.
 - a. Horizontal Gaze Nystagmus – HGN
 - b. Walk and Turn
 - c. One Leg Stand

- d. The Preliminary Breath Test (PBT) can also be administered by a certified operator. This test should not be used to establish sole probable cause. It is used as a tool in instances of suspected low blood alcohol content where a suspect may be released if the PBT reading is sufficiently low. The PBT may also assist in cases where the operator may be under the influence of other drugs. The PBT may show a very low or "00" reading for alcohol thus raising suspicion for other drug influence. Officers should be reminded that a PBT test is not admissible in court.
- (1) Only the Preliminary Breath Test (PBT) equipment approved by the Maryland Toxicologist's Office will be used.
 - (2) Only those persons approved by the toxicologist will be authorized to administer PBT's. A copy of the class certificate or the PBT card must be on file with the Training Supervisor prior to operation.
 - (3) The Training Supervisor will be responsible for maintaining the appropriate PBT records.
 - (4) Every time a PBT is offered to a driver, a "Preliminary Breath Test Advisement of Rights" must be completed.
 - (5) The results of PBT offers, refusals, monthly checks, and the subjects tested must be recorded on the PBT Log by the PBT operator, if no arrest is made. If an arrest is made, it is up to the arresting officer to log the PBT information on the PBT Log.
 - Pages in the PBT Log will be consecutive, starting with page #1.
 - A new page will be initiated to start a new year.
 - (6) A summary of PBT's offered, refused, and subjects tested during each month will be forwarded to Maryland State Police's (MSP) Chemical Test for Alcohol Unit (CTAU) on MSP Form 34A by the fifteenth of the month for the preceding month.
 - (7) If a PBT is given or offered prior to arrest, the white copy of the PBT form will be turned over to the arresting officer by the PBT operator, and shall be placed in the arrest file. The arresting officer

shall log the PBT information.

(8) Each PBT must be calibrated once each month using a 0.08 simulated alcohol solution located in the "Intoximeter Room" at the Frederick County Law Enforcement Center.

- The results of this test shall be recorded on the PBT Log by the PBT operator.
- The results of this test will be recorded in the "Name" column as "Monthly Test".
- The results of this test must be between 0.07 and 0.09.
- PBT's that do not achieve this result must be turned in for repair and re-calibration.

(9) PBT's, though primarily acquired to aid in identifying suspected drinking drivers, may also be utilized effectively in other instances. For example, a passenger in a vehicle in which the driver has been arrested for DUI/DWI may be requested to voluntarily submit to a PBT if the passenger intends to drive the vehicle from the scene and there is reasonable grounds to believe the passenger is under the influence of alcohol. PBT's may also be used to test a suspect or victim of a crime who is suspected to be under the influence of alcohol. These tests – both taken and refused - shall also be logged.

(10) PBT results can and should be included in the "Reasonable Grounds" section of MVA Form DR-15A, as supporting documentation.

9. Formulate appropriate arrest decisions based on all evidence accumulated.

B Arrest and Processing is the next step in the process. In all arrests for violation of Motor Vehicle Law, Section 21-902, the DR-15 form "Advice of Rights" will be executed. All blanks must be filled in and the completed form read to the defendant giving the defendant an opportunity to sign the form acknowledging receipt. If the defendant refuses to sign, enter "refused" in the space designated "Driver's Signature." The original (white copy) will be forwarded to Records with the arrest file, a copy (pink copy) given to the defendant and a copy (yellow copy) included in the envelope of documents

sent to the MVA Administrative Per-Se Unit if applicable.

- C Article 24 of the Maryland Declaration of Rights requires that a person detained for a violation of Motor Vehicle Law, Section 21-902 must, on request, be permitted a reasonable opportunity to communicate with counsel before submitting to the chemical test for breath. Defendants may also elect to submit to their attorney's BAC test prior to submitting to the required test, however the two-hour time limit for the required test is not affected. Officers should observe the administration of the attorney test. Refusal will be noted if the two-hour time limit passes while awaiting the attorney's test.

- D Arresting officers have no responsibility to suggest a detained person contact counsel at this point in processing. If a request is made by the defendant prior to conducting the required test officers shall:
 - 1. Note the time of request.
 - 2. Allow use of a telephone to the detained person.
 - 3. Note number of calls attempted.
 - 4. Provide the Office of the Public Defender's phone number if defendant so requests.

- E. Officers shall not allow this request to interfere with the mandated two-hour time limit for conducting the chemical test. If it appears that notification of counsel will exceed the time limit, remind the defendant of the administrative penalties imposed on the DR-15 form for exceeding the time limit. If the two-hour time limit is reached while awaiting counsel, the officer shall initiate a DR -15A form noting a refusal and continue to process as directed in paragraphs A through K of this section. The two-hour time limit begins at time of arrest.

- F. Remain with the defendant during the twenty minute waiting period prior to the test and witness the administration of the test to provide corroborating testimony if necessary. Do not allow the defendant to have anything by mouth from the time of arrest to execution of the breath test.

- G. If the defendant refuses the test, the DR-15A will be executed. A properly prepared DR-15A is a necessary condition for the exercise of the

Administrative Per-Se Law by the MVA. The form shall be completed per Administrative Per-Se guidelines issued to all officers.

- H. If defendant agrees to submit to the test, the test for breath will be administered unless the defendant is injured in a collision and will not be able to take a breath test within the two hour time limit or the test for breath test equipment is not available.
- I. Charges will be placed by issuing a Maryland Uniform Complaint and Citation or a Safety Equipment Repair Order (SERO) for the probable cause and a Citation for the DUI/DWI charge. Any other charges will also be listed on separate citations.
- J. If the defendant is a Maryland resident with transportation home by a sober adult and there is no concern regarding the defendant's appearance in court, the defendant need not be taken before a District Court Commissioner when DUI/DWI is the most serious charge and there are no other associated charges which require appearance. If the defendant is allowed to leave without seeing a Commissioner, a copy of the Alcohol Influence Report submitted will be sent to the State's Attorney's Office for prosecutorial purposes by the Records Section Administrative Assistant. The arresting officer will issue the District Court Notice to Appear form to the defendant before they are released.
- K. Should a full custody arrest be necessary, the defendant will be transported to the Central Booking Unit at the Frederick County Adult Detention Center for processing and a bond hearing.

III. Chemical Tests for Alcohol

- A. The chemical test for alcohol will be the test administered. The blood test may be used only in any of the below circumstances:
 - 1. If the defendant is unconscious or otherwise incapable of refusing the breath test.
 - 2. Injuries to the defendant require removal to a medical facility.
 - 3. A breath test instrument is not available.
- B. Breath Test Guidelines

1. Notify dispatch to ascertain if a Sheriff's Office Intoximeter Operator is on duty, if not, then the dispatcher will contact the Maryland State Police or Frederick City Police to ascertain if they have an intoximeter operator on-duty.
 2. Officers shall respond to the appropriate operator location from the scene of the arrest completing as much of their paperwork there as possible.
 3. If neither FCSO, MSP or FPD have an operator on-duty, the dispatcher can check with a neighboring County closest to the scene of the arrest. If none are still available, the blood test will be offered.
 4. Secure the MSP-33 form (Results of Test for Alcohol Concentration) and the accompanying result receipts ensuring that the administering officer signs all appropriate forms.
 5. Secure signature of administering officer on the DR-15A, Officers certification and order of suspension, if the BAC result is .08 or greater.
 6. If the results are .00, an indication that no alcohol is present, the defendant will be checked by a certified Drug Recognition Expert if available or transported to the closest emergency room for examination if one is not available.
 7. If the results are above .30 the defendant will be transported to the closest emergency room for examination.
- C. Blood Test Guidelines for when criteria for a blood test have been met.
1. The arresting officer shall obtain a self-addressed, pre-stamped blood alcohol kit from Frederick County Law Enforcement Center and if the defendant is not already in a hospital, transport the defendant and the kit to the hospital in accordance with the following:
 - a. Frederick Memorial Hospital: The officer shall report to the emergency room, request the test and advise the receptionist of the time remaining before the test becomes invalid due to expiration of the two hour limit. **OFFICERS SHALL INFORM HOSPITAL PERSONNEL THAT THE DEFENDANT IS TO BE BILLED FOR SERVICES AND TREATED AS AN OUT-PATIENT.**

- b. Any other hospital: Contact emergency room personnel for proper procedures.
2. The arresting officer shall witness the withdrawal of blood and immediately take possession of the containers and package them according to below guidelines.
3. Only the blood test kit approved by the Maryland State Toxicologist will be used for the withdrawal of blood. The forms contained in the blood kit will be completed as follows:
 - a. The consent form included in the blood kit is to be completed by the arresting officer, signed by defendant and sent with specimen to MSP-CTAU.
 - b. Complete the included blood collection report and include it with the specimens.
 - c. Complete all four white seals attaching two to the tubes (one each) placed over the rubber stoppers.
 - d. The MSP-34 form will be completed only in the section entitled "Arrest Information." All areas are self-explanatory except for the following:
 - (1) Case number is the TPD local case number.
 - (2) Time refers to time of arrest.
 - (2) Send results to: Records Administrative Assistant at current address of TPD Headquarters.
 - (4) Place all blood kit paperwork in the cardboard mailer, beneath the plastic box containing the blood vials.
 - e. Attach the two blue integrity seals on either end of the clear plastic box as indicated on the box.
 - f. Attach the two red integrity seals placing them over the locking tabs of the cardboard mailer.
 - g. The State's Attorney's Office also requires that the arresting officer

direct the medical personnel drawing blood to complete and sign the Qualified Medical Personnel Certificate to be included in the case file.

- h. Subsequent to sealing of the blood kit it is to be mailed from a mailbox by the end of the shift where a daily pick up is made.

- 4. The MSP-CTAU will notify the Records Administrative Assistant by mail of test results based upon submitted information from MSP-34. Once the Records Administrative Assistant has logged the information, it will be forwarded to the appropriate officer so disposition on the result can be made. If the officer has already charged the defendant, then the paperwork will be forwarded to a Records Section Administrative Assistant. The Records Section Administrative Assistant will provide the defendant with the blood test results by mailing the defendant a copy of the letter by registered mail, return receipt requested, if necessary. The original of the letter will be placed in the case file as well as the returned receipt. All original paperwork relating to the blood test will then be placed in the arrest case file.

IV. 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 shall:

- A. Obtain prompt medical attention for the person and if necessary arrange transportation to the nearest medical facility.

- B. If a chemical test for alcohol by blood withdrawal will not jeopardize the individual's health or well-being, the officer will direct a qualified person using the approved blood kit to withdraw the blood sample. The consent form will be completed and the word "unconscious" written where the defendant's signature would normally appear.

- C. If the individual regains consciousness or otherwise becomes capable of refusing the test prior to the withdrawal of blood, the investigating officer will proceed with processing as indicated in above sections.

V. Drivers Involved in Fatal Collisions:

- A. "If a person is involved in a motor vehicle accident that results in the death of,

or a life threatening injury 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 or while impaired by alcohol, while so far under the influence of 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, while under the influence of a controlled dangerous substance, or in violation of §16-813 of this title, the person shall be required to submit to a test, as directed by the officer.” (§16-205.1.c.1, Maryland Transportation Article)."

1. "If a police officer directs that a person be tested, then the provisions of Section 10-304 of the Courts and Judicial Proceedings Article shall apply.” (§16-205.1.c.2, Maryland Transportation Article)
- B. "Any medical personnel who perform any test required by this section are not liable for any civil damages as the result of any act or omission related to such test not amounting to gross negligence" (§16-205.1.c.3 , Maryland Transportation Article).
- C. The on-call State’s Attorney will be called when charges are anticipated in a fatal collision.
- D. Complete the DR-15, ensuring that the detained person is aware that when involved in a fatal collision the detained person is required by law to submit to a chemical test as directed by the officer. Record the detained person’s decision on the chemical test on the DR-15 form.
- E. If the breath test is selected, the officer will follow the procedures previously set forth in this directive. Refusal of the detained person to cooperate will require transport to the hospital for a blood test.
- F. If the blood test is selected, the officer will witness the withdrawal of blood and immediately take possession of the containers. Blood samples obtained under this procedure will be forwarded to the Chemical Test for Alcohol Unit as indicated in earlier directives.

VI. Deceased Persons

- A. When the operator of a motor vehicle dies as a result of injuries sustained in an automobile collision, the Deputy Medical Examiner will take custody of the body.

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

VII. Defendant's Vehicle

- A. If the defendant is alone and stops the vehicle in an unsafe or illegal location, or the vehicle is impeding or will impede traffic, the officer shall have the vehicle towed in accordance with established towing policy per GENERAL ORDER Ancillary Services. If the defendant stops the vehicle in a safe and legal location, the officer shall ensure that the vehicle is locked and left at the scene. The keys may be turned over to a sober adult possessing a valid driver's license who responds to take custody of the defendant if applicable.
- B. If the vehicle is occupied by passengers when the defendant is taken into custody, officers may release the vehicle to them under the following conditions:
 - 1. The defendant has an ownership interest in the vehicle and grants permission to a sober, licensed adult 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 adult to operate the vehicle.
 - 3. If the passengers do not meet the above criteria, the vehicle and keys will not be released. The vehicle will then be towed or parked as is and locked. The officer will retain the keys releasing them to the defendant upon completion of the arrest process, warning defendant against driving for twenty-four hours or until sober.
- C. The officer should take reasonable steps to arrange alternative transportation for the passengers. Factors such as time of day, adverse conditions, location of arrest, age, sex, and physical condition of passengers should be used as guidelines when weighing alternatives for the disposition of the passengers.
- D. Officers will search the vehicle and note the presence of any arrest related material. Search will be conducted following departmental policy and current case law.

VIII. Summation of Forms Needed for DWI/DUI Arrest:

- A. DR-15, Advice of Rights
- B. DR-15A, Officers Certification and Order of Suspension as needed
- C. If blood test is given:
 - 1. MSP-34 sent with kit
 - 2. Qualified Medical Personnel Certificate
 - 3. All forms included in blood kit
- D. If breath test is given:
 - 1. MSP-33, Results of Test for Alcohol Concentration
 - 2. Receipts indicating actual reading of BAC
- E. MSP-32 Alcohol Influence Report
- F. Maryland Uniform Complaint and Citations (as appropriate) or SERO as probable cause for initial contact.
- G. Arresting officers shall place the above documents in a case file for court presentations. The case will be placed in the records box.

ATTACHMENTS:

Amended Date:

Review Date:

Review Date:

Review Date:

Rescinds:

Order Written By: Sergeant Shawn R. Tyler
Order Edited and Approved by: Chief of Police

CALEA Standards Included in this Order
Chapter 61 Traffic Law Enforcement
Traffic Enforcement 61.1.10, 61.1.11