

Under the Influence/Impaired Driving

504.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving under the influence/driving while impaired (DUI/DWI).

504.2 POLICY

The Elkton Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Maryland's impaired driving laws.

504.3 INVESTIGATIONS

Officers should not enforce DUI/DWI laws to the exclusion of their other duties unless specifically assigned to DUI/DWI enforcement. All officers are expected to enforce these laws with due diligence.

The Elkton Police Department will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUI/DWI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FST) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in this state or another jurisdiction.

504.4 FIELD TESTS

Officers should utilize standardized FSTs when investigating violations of DUI/DWI laws.

504.5 CHEMICAL TESTS

A person implies consent under Maryland law to a chemical test or tests, and to providing the associated chemical sample, when an officer has detained the person on suspicion of driving or attempting to drive a motor vehicle when the person is (Md. Code TR § 16-205.1(a)(2); Md. Code TR § 16-205.2(a); Md. Code TR § 16-813):

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- (a) Under the influence of alcohol or impaired by alcohol.
- (b) So impaired by any drug, any combination of drugs or a combination of a drug and alcohol that he/she cannot safely drive a vehicle.
- (c) Impaired by a controlled dangerous substance.
- (d) In violation of an alcohol restriction.
- (e) Driving, operating or in physical control of a commercial vehicle with any concentration of alcohol in his/her blood or breath.

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

A test to determine alcohol concentration shall be taken within two hours after the person is apprehended. A test to determine the presence of a drug or a controlled dangerous substance shall be taken within four hours after the person is apprehended (Md. Code CJ § 10-303).

504.5.1 TYPE OF TEST

A blood test may be required: (Md. Code CJ § 10-305):

- (a) To determine alcohol concentration when:
 - 1. Injuries to the person require removal of the arrestee to a medical facility.
 - 2. Equipment for administering the test of breath is not available.
 - 3. An officer has reasonable grounds to believe a person who was involved in a motor vehicle accident that resulted in death or a life-threatening injury to another person was driving while under the influence or impaired by alcohol or drugs, pursuant to Md. Code TR § 16-205.1(c)(1)(ii) or (c)(1)(iii).
- (b) The officer reasonably believes that the impairment is caused by drug or controlled dangerous substance content.

504.5.2 STATUTORY NOTIFICATIONS

Officers shall advise the detained person that:

- (a) Neither a refusal nor the taking of a preliminary breath test shall prevent or require a subsequent chemical test (Md. Code TR § 16-205.2(b)).
- (b) Upon receipt of a sworn statement from the officer that the person was charged with DUI/DWI and refused to take a test, or was tested and the result indicated an alcohol concentration of 0.08 or more, the Motor Vehicle Administration (MVA) shall (Md. Code TR § 16-205.1(b)):
 - 1. Suspend the person's driving privilege pursuant to state law.
 - 2. Disqualify the person's privilege to operate a commercial vehicle pursuant to state law.

The result of the preliminary breath test shall be used only to decide whether an arrest should be made (Md. Code TR § 16-205.2(c)).

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504.5.3 BREATH SAMPLES

The Duty Officer should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Department members obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Duty Officer.

A breath test shall be administered at the direction of an officer by a qualified person trained in the use of equipment that has been approved by the Department of State Police Forensic Sciences Division. The arresting officer may not administer the breath test (Md. Code CJ § 10-304(b)).

Unless otherwise required by law, a breath test shall be used to determine alcohol concentration (Md. Code CJ § 10-305(a)).

504.5.4 BLOOD SAMPLES

Only a qualified medical person trained in the use of equipment that has been approved by the Department of State Police Forensic Sciences Division shall draw blood to collect blood samples. The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task (Md. Code CJ § 10-304(c)(1)).

The blood sample shall be packaged, marked, handled, stored, and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because the arrestee has a bleeding disorder or has taken medication that inhibits coagulation, the arrestee shall not be required to take a blood test. Such inability to take a blood test shall not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

504.6 REFUSALS

When an arrestee refuses to provide a chemical sample, officers should (Md. Code TR § 16-205.1(b)(2)):

- (a) Advise the arrestee of the requirement to provide a sample and the administrative sanctions or criminal penalties for refusal (Md. Code TR § 16-205.1(b)(1)).
- (b) Audio- and/or video-record the admonishment and the response when practicable.
- (c) Document the refusal in the appropriate report.

Any person who drives, operates or is in physical control of a commercial motor vehicle and refuses to take a chemical test to determine the alcohol concentration shall be placed out of service for the 24-hour period immediately following the time the officer detects alcohol in the driver's blood or breath (Md. Code TR § 16-813(b)).

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504.6.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to an alcohol concentration test or a drug and controlled dangerous substance test, officers shall (Md. Code TR § 16-205.1(b)(3)):

- (a) Confiscate the person's driver's license.
- (b) Personally serve an order of suspension of the driver's license on the person.
- (c) Issue a temporary license to drive.
- (d) Inform the person that the temporary license allows the person to continue driving for 45 days.
- (e) Inform the person of his/her rights, as listed on the MVA Advice of Rights form.

504.6.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample should be obtained when any of the following conditions exist:

- (a) A person has refused to submit to a chemical test and the officer has reasonable grounds to believe that the person was involved in a vehicle accident while driving under the influence of alcohol or a controlled substance that resulted in serious bodily injury or death of another (Md. Code TR § 16-205.1(c)(1)).
- (b) The officer has reasonable grounds to believe a person was driving while under the influence of alcohol or a controlled substance and the person is dead, unconscious or otherwise in a condition that renders him/her incapable of refusing a test. (Md. Code CJ § 10-305; Md. Code TR § 16-205.1(d)(1)).
- (c) A warrant is required if either of these circumstances exists, unless the officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts, such as a lengthy time delay resulting from an accident investigation or medical treatment of the person.

504.6.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to providing such a sample without physical resistance.
 - 1. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.

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- (e) Ensure that the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force that reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform the duties of a supervisor, as set forth above.

504.7 ARREST AND INVESTIGATION

504.7.1 REPORTING

The Field Operations Bureau Commander shall ensure that this department complies with all state reporting requirements pursuant to Md. Code TR § 16-205.1(b)(3)(viii).

504.7.2 TEST ADMINISTERED BY OUTSIDE PHYSICIAN

A person is permitted to have a physician of his/her own choosing administer tests, in addition to the test administered at the direction of an officer. In the event a test was neither offered nor requested by the officer, the person may request, and the officer shall have administered, one or more of the tests provided by state law (Md. Code CJ § 10-304(e)).

504.8 RECORDS DEPARTMENT RESPONSIBILITIES

The Records Supervisor will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

504.9 ADMINISTRATIVE HEARINGS

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the MVA.

Any officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify the prosecuting attorney.

An officer called to testify at an administrative hearing should document the hearing date and the MVA file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.