
	GAITHERSBURG POLICE DEPARTMENT		
	DUI/DWI Enforcement		
	GENERAL ORDER	620.4	
Effective Date	3/20/2024		
Authorized by: Mark P. Sroka CHIEF OF POLICE		SIGNATURE	DATE 3/20/2024

1. DEPARTMENT POLICY

1.1 It is the policy of this Department to actively enforce violations of the law regarding driving under the influence of drugs and/or alcohol. Any person who operates, or who attempts to operate a motor vehicle while under the influence of alcohol and/or drugs, poses a hazard to other motorists and the community. Therefore, each officer shall make it a priority to be on the alert for these violators and take appropriate action to remove these dangerous operators from the road.

2. CHARGING SECTIONS

2.1. DUI/DWI

2.1.1. TA 21-902 is the statute pertaining to the following:

- 2.1.1.1. Driving While Under the Influence of Alcohol;
- 2.1.1.2. Driving Under the Influence of Alcohol Per Se;
- 2.1.1.3. Driving While Impaired by Alcohol;
- 2.1.1.4. Driving While Under the Influence of Drugs;
- 2.1.1.5. Driving While Under the Influence of a Combination of Alcohol and Drugs; or
- 2.1.1.6. Drunk and Drugged Driving Offenses while Transporting a Minor.

2.2. Driving While Drinking Alcohol

2.2.1. TA 21-903 is the charging section for a violation involving the consumption of an alcoholic beverage while driving a motor vehicle on a highway.

2.3. Driving Under the Influence While Transporting a Minor

2.3.1. TA 21-902(a)(3) is the charging section for driving under the influence of alcohol while transporting a minor.

- 2.3.2. TA 21-902(b)(2) is the charging section for driving while impaired by alcohol while transporting a minor.
- 2.3.3. TA 21-902(c)(3) is the charging section for driving while impaired by drugs or drugs and alcohol while transporting a minor.
- 2.3.4. TA 21-902(d)(2) is the charging section for driving while impaired by controlled dangerous substance while transporting a minor.

3. DETECTION AND PRE-ARREST SCREENING

3.1. Detection

- 3.1.1. Detection is the first step in any DUI/DWI enforcement action.
- 3.1.2. An officer's observations in this stage are critical in establishing probable cause upon which the decision to arrest (or not arrest) is based; therefore officers must perform the following tasks:
 - 3.1.2.1. Recognize and identify specific driving behaviors that have a high probability of signifying that the driver may be under the influence or impaired by alcohol and/or other drugs;
 - 3.1.2.2. Exercise due care and caution in pursuing impaired drivers and be alert for unusual or inappropriate actions by the driver (See General Order 622.1 - Pursuits);
 - 3.1.2.3. Notify PSCC of the traffic stop;
 - 3.1.2.4. Approach the vehicle with caution;
 - 3.1.2.5. Questioning the driver pertaining to alcohol/drug usage is permissible at this point, because an arrest has not yet occurred;
 - 3.1.2.6. If the violator's vehicle was not in motion, determine if probable cause exists to establish "actual physical control";
 - 3.1.2.7. If impairment is suspected, request the driver step from the vehicle and move to a safe location to administer field sobriety (or pre-arrest screening) tests. The driver has the right to refuse to submit to all tests;

- 3.1.2.8. If a suspected DUI/DWI has been involved in an accident, medical evaluation and treatment will take precedence over administration of the tests;
- 3.1.2.9. If a particular test would aggravate the DUI/DWI's injuries (actual or claimed), that particular test will not be administered and should be noted in the officer's DUI/DWI Arrest Report, if the individual is arrested;
- 3.1.2.10. If a PBT is offered to a violator, the PBT will only be given by an officer trained and certified in the use of this equipment. The PBT will be used as per the State Toxicology guidelines.
- 3.1.2.11. All PBT trained officers shall perform a monthly calibration test on their assigned PBT and record the results in the MSP Form #104 (PBT Log).
 - 3.1.2.11.1. A proper PBT calibration consists of a PBT reading a known sample with a margin of error of no more than +/- .01% difference.
 - 3.1.2.11.2. If a PBT requires calibration, officers should contact the PBT coordinator to conduct a calibration.
- 3.1.2.12. When administering a PBT, the violator must be read MSP Form #102 (Preliminary Breath Test Advisement of Rights), which advises the violator that reasonable grounds exist to believe that the violator is DUI/DWI, and that the PBT is being offered.
 - 3.1.2.12.1. MSP Form #102 also advises the violator that they are not required to submit to the PBT, that there is no penalty for refusing, and that by submitting does not relieve the violator of the obligation to submit to a subsequent chemical test as prescribed by law, should s(he) be charged with DUI/DWI.

- 3.1.2.12.2. A failure to read this form to a violator could result in the officer's probable cause being challenged in the MVA Administrative Hearing.
- 3.1.2.12.3. A copy of the MSP Form #102 will be provided to the department's PBT coordinator for recordkeeping.
- 3.1.2.13. PBT results are to be recorded in the DUI/DWI Event/Arrest Report, but cannot be used as evidence in Court, unless brought into evidence by defense counsel.
- 3.1.2.14. Officers must record each usage of the PBT in the MSP Form #104 (PBT Log).
- 3.1.2.15. Standardized Field Sobriety Tests shall only be administered by an officer(s) trained to administer the tests.
- 3.1.2.16. If the driver submits to the tests and, in the officer's best judgment and discretion, passes them, the driver may be allowed to continue on their way unless the officer intends to arrest the driver for some other reason(s), or issue a citation related to the stop.

4. ARREST AND PROCESSING

4.1. Taking Custody of the Arrestee

- 4.1.1. If all elements of the DUI/DWI violation have been clearly established and the traffic stop results in a physical arrest, the arrestee will be placed under arrest, searched, and handcuffed pursuant to Department policies, and will be transported to a processing facility without unnecessary delay, unless the arrestee is injured and needs to be transported to a medical facility.
- 4.1.2. The arrestee should not be advised of their Constitutional (Miranda) rights until after they have taken the blood or breath test.

4.2. Processing the Arrestee at a Processing Facility

- 4.2.1. The arresting officer will read the DR-15 form (Advice of Rights for Chemical Test) to the arrestee, who will be requested to sign it

once the arrestee decides whether or not to submit to a test.

4.2.2. If the arrestee speaks Spanish, or another language for which a DR-15 printed in that language is available, the arresting officer will have an officer fluent in that language read the DR-15 to the arrestee.

4.2.2.1. The arrestee will not be handed the DR-15 form and told to read it themselves, however, the arrestee may be given the form to read if they request to see it (Maryland Law requires that the DR-15 be read to the arrestee by an officer).

4.2.3. If the arrestee agrees to submit to the breath test, the arresting officer must ensure that the arrestee does not eat, drink, or smoke anything until after the test has been administered. Arresting officers will not administer chemical breath tests on their arrestee.

4.2.3.1. Article 24 of Maryland's Declaration of Rights requires that a person detained for DUI/DWI must, on request, be permitted a reasonable opportunity to talk with an attorney.

4.2.4. After the arrestee has taken the breath test (or blood test if transported to the hospital) the arrestee must be advised of his/her Miranda rights by the arresting officer if they are to be questioned and the officer intends to use the arrestee's statements as evidence.

4.2.5. The arrestee has a Constitutional right to consult with an attorney and questioning of the arrestee will stop if the arrestee requests one. If an arrestee demands an attorney, and the officer intends to use the arrestee's statements as evidence, the arrestee will be provided with a phone and an area with which to consult an attorney.

4.2.5.1. Communications between the arrestee and his/her attorney are privileged and officers will not monitor, eavesdrop, or listen-in on them.

4.2.5.2. When complying with an arrestee's demand to consult an attorney, officers should document the date and time of the demand, and date, time and number of calls attempted.

4.2.5.3. The Public Defender's Office has a "duty-attorney" which can be contacted 24-hours a day. During

business hours, the arrestee can contact the Public Defender's Office directly at 301-279-1660. During non-business hours, the arrestee can call the phone numbers on file at the station.

- 4.2.6. Questioning of the arrestee may resume if the arrestee, after consulting an attorney, waives his/her rights and agrees to answer questions, however, the arrestee should be re-advised of their Miranda rights.
- 4.2.7. The GPD-50 (Advise of Rights Form) will not be given to the arrestee for him/her to read for themselves, unless the arrestee wants to see the form. The officer will read the form.
- 4.2.8. The arrestee will be given a copy of the GPD-50, whether or not s(he) signs it.
- 4.2.9. While at the processing facility, the arresting officer will ensure that rules and regulations are followed by both the officer and the arrestee.
- 4.2.10. During processing, the arrestee will be under the supervision of the arresting officer, who will ensure that all persons are safe.
- 4.2.11. If the arrestee has a Maryland driver's license and his/her test result is 0.08% or higher, or the test is refused, the officer shall complete, in accordance with Maryland's Administrative Per Se Law, a DR-15A Form in as much detail as possible, and will mail it, along with the DR-15, MSP 33 (if the breath test is taken) and the defendant's MARYLAND DRIVER'S LICENSE, via U.S. Mail within 72 hours.
- 4.2.12. The DR-15A will not be completed if a arrestee's test result is less than 0.08%.
 - 4.2.12.1. If an arrestee is from out of state, the DR-15A form will still be completed, but the officers will check the box indicating that no temporary license was issued.
 - 4.2.12.2. If the arrestee possesses an out of state license, it shall be returned to the arrestee upon completion of processing.
- 4.2.13. The DR-15A will be completed, but the temporary license will not be issued if the defendant refuses to sign the temporary license.

4.2.14. In all breath test cases, the certified breath test operator shall be subpoenaed to court.

4.3. Unusually Low or Unusually High Breathalyzer Test Results

4.3.1. Extreme breath test results require the officer to perform certain tasks in the best interests of the officer and the arrestee.

4.3.2. If the result is 0.00 BAC and the arrestee is not suffering from a medical condition, and/or the arrestee's level of impairment observed is not consistent with the intoximeter test result, the arresting officer should contact a Drug Recognition Expert (D.R.E.), if one is available, to perform a DRE evaluation.

4.3.2.1. If a DRE is not immediately available, the arresting officer shall contact the PSCC to request the on-call DRE.

4.3.3. If a medical condition is the suspected cause, call an ambulance to have the arrestee evaluated by EMS personnel.

4.3.4. If the result is above 0.35 BAC, have a second test conducted immediately and if the result of the second test is the same or higher, an ambulance will be called.

4.3.5. The Drug Recognition Expert, when asked to perform a DRE evaluation, will conduct a twelve-step evaluation to determine whether the arrestee has a medical condition or is impaired.

4.3.5.1. If impaired and unable to operate a motor vehicle safely, the DRE will be able to reach an opinion about what drug category is causing the impairment.

4.3.5.2. The DRE can also determine that there is no impairment.

4.3.5.3. The tests consist of psychophysical and clinical tests.

4.3.5.4. Prior to the beginning of the evaluation, the DRE will Mirandize (via GPD-50 – Advise of Rights) the arrestee and ask if the arrestee wishes to participate in a DRE Evaluation. The arrestee can elect to participate or refuse.

- 4.3.5.5. The DRE can be called to testify in Court, if necessary.
- 4.3.5.6. The site at which a DRE evaluation is done must be sanctioned by NHTSA and must meet standards pertaining to sound, space, floor covering, etc.
 - 4.3.5.6.1. In most cases, the station in which the arrestee is being processed will be sufficient and the DRE will respond to that location.
 - 4.3.5.6.2. If deemed not sufficient, the DRE will request the arrestee to be brought to a different station.
 - 4.3.5.6.3. The DRE will not be called to the arrest location to determine if an individual should be arrested.
- 4.3.6. The following is the criteria for a DRE evaluation:
 - 4.3.6.1. A suspect is arrested for driving under the influence of drugs; or
 - 4.3.6.2. A subject's blood alcohol content (as determined by the breath test unit) does not correspond with his/her level of intoxication; or
 - 4.3.6.3. A subject's condition is not medically related.
- 4.3.7. The DRE can be utilized for any "drugged-driving offense" during his/her on-duty hours, or if he or she is the on-call DRE.
 - 4.3.7.1. The DRE will only respond after the intoximeter test has been administered and the results are received.
- 4.3.8. If the arrestee is uncooperative and indicates a refusal to submit to any tests, the DRE should not be contacted.

4.4. Processing at a Hospital

- 4.4.1. A search warrant is not required to withdraw blood in the event an officer determines that an arrestee that has been transported to a hospital and unconscious or otherwise incapable of refusing to submit to a breath or blood test.

- 4.4.2. Only qualified medical personnel may withdraw blood (using a State Toxicologist-approved blood kit).
- 4.4.3. In the event the processing takes place at a hospital (i.e., arrestee transported there from collision scene), the arrestee's only option is the blood test; which must be administered within two (2) hours of the arrest.
 - 4.4.3.1. The arresting officer shall read the arrestee the Advice of Rights, via DR-15 and:
 - 4.4.3.1.1. If the arrestee consents to the blood test, the officer shall direct qualified medical personnel to withdraw blood using a State of Maryland approved blood kit.
 - 4.4.3.1.2. If the arrestee refuses the blood test, the officer shall proceed with the regular test refusal procedures.
- 4.4.4. When the blood test is administered, the arresting officer will:
 - 4.4.4.1. Obtain a blood test kit approved by the State Toxicologist;
 - 4.4.4.2. Check the expiration date on the blood kit to ensure that it is still current;
 - 4.4.4.3. Check the blood kit to ensure that it contains everything that it is supposed to have;
 - 4.4.4.4. Complete the "Consent Form" area of the Blood Collection Report and have the arrestee sign it;
 - 4.4.4.5. After the arrestee has signed the Consent Form, instruct the "Qualified Medical Person" to withdraw some of the arrestee's blood using only the equipment contained in the kit;
 - 4.4.4.6. Witness the actual withdrawal of the blood into the blood kit's vials and sign the Witness Statement Form. This is especially important because as of October 2016, medical personnel withdrawing blood will not be required to appear in court;

- 4.4.4.7. The vials of blood will not be shaken vigorously, but will be slowly inverted at least five (5) times to assure proper mixture with anticoagulant powder.
- 4.4.4.8. Ensure that the needle, syringe and non-alcoholic antiseptic pad are not placed back into the blood kit.
- 4.4.4.9. Place the properly sealed blood kit into the zip-lock bag, and place the bag and all completed forms inside the blood kit's cardboard mailer;
- 4.4.4.10. Ensure that the cardboard mailer is then closed and sealed by using the two "integrity seals"; and
- 4.4.4.11. Mail the blood kit immediately by carefully placing it in any U.S. Postal facility indoor mailbox.

4.5. **Breath Test Operator Responsibilities**

- 4.5.1. Officers operating breath test equipment will conduct all tests in accordance with the State Toxicologist rules and will complete an agency Intoximeter information sheet.
- 4.5.2. If tests are administered for allied agencies which are participants in the breath test program, the operator will not record the arrests in this GPD's MSP36B, Operator's Log. These tests must be recorded in the outside agency's log of tests. Operators will record the tests in their MSP36A Operator's Log.
- 4.5.3. If tests are administered for allied agencies which are not participants in the breath test program, breath test operators will record arrests in this agency's MSP 36B. The name of the agencies for whom tests were performed will be entered in the comments column. Non-participating agency arrests will be recorded, regardless of whether tests are administered.
- 4.5.4. When breath test results are 0.00% BAC, breath test operators will instruct arresting officers to have arrestees evaluated by DREs or, if DREs are not available or arrestees do not agree to be evaluated by DREs, to determine whether arrestees are to be transported to health care facilities for emergency protective services consistent with ET 13-709.
- 4.5.5. When breath test results are greater or equal to 0.35% BAC, breath test operators will instruct arresting officers to determine whether

arrestees are to be transported to health care facilities for emergency protective services consistent with ET 13-709.

- 4.5.6. If a breath test is performed for an allied agency, the breath test operator will release the chemical test evidence to the arresting officer. This allows the officer to testify to the results in court. If the operator prefers to retain the evidence, copies will be made for the officer.

5. SPECIAL SITUATIONS FOR DWI OR DUI INVOLVED IN A COLLISION RESULTING IN SERIOUS INJURY OR DEATH

5.1. DUI/DWI Processing and/or Charging

- 5.1.1. Vehicle collisions that result in life-threatening injury or death of any occupant will be handled by MCP Collision Reconstruction Unit (CRU).
- 5.1.2. GPD officers will not attempt to initiate any DUI/DWI processing or charging procedures of any individuals involved in a vehicular collision resulting in life-threatening injury or death unless specifically directed by the MCP CRU sergeant.

6. PLACING CHARGES

6.1. For DUI/DWI Not Involved in a Fatal or Serious Injury Collision

- 6.1.1. By Maryland standard, if an arrestee's blood alcohol content (BAC) is 0.08, he or she is considered (along with other competent evidence) to be under the influence of alcohol.
- 6.1.2. If an arrestee's BAC result is .08 or higher, officers should use the following charges:
 - 6.1.2.1. 21-902(a)(1);
 - 6.1.2.2. 21-902(a)(2);
 - 6.1.2.3. 21-902(b)(1); and
 - 6.1.2.4. Issue any citations from which probable cause was developed and/or resulting from the traffic stop.
- 6.1.3. If an arrestee's BAC is 0.07 (or lower, in the officer's discretion) he or she is considered, along with other competent evidence, to be

impaired by alcohol.

6.1.4. If an arrestee's BAC result is .07 (or lower, in the officer's discretion), officers should:

6.1.4.1. Circle 21-902 (a)(1); and

6.1.4.2. Issue any citations from which probable cause was developed and/or resulting from the traffic stop.

6.1.5. If an arrestee refuses the breath test, officers should charge the arrestee with everything in 21-902, except 21-902(a)(2) (the Per-Se Charge).

6.1.6. For arrestees who are under 21 years of age, s(he) need only have an odor of an alcoholic beverage on their breath.

6.1.6.1. They do not have to meet the 0.02% B.A.C. standard;

6.1.6.2. Officers must be able to articulate all of their observations;

6.1.6.3. They must be read the DR-15 (Advice of Rights for Chemical Test); and

6.1.6.4. They can refuse or accept the breath test, unless involved in a PIC that has resulted in serious, life-threatening injury(s) or a fatality;

6.1.6.5. All required reports and forms must be completed and submitted.

7. AFTER PROCESSING

7.1. Arrestee to be Taken Before District Court Commissioner or Released in the Officer's Discretion

7.1.1. Unless the arrestee is hospitalized after processing, the arrestee will be taken before a District Court Commissioner if other charges exist; or, pursuant to the provisions of TA 26-202, the arresting officer in his/her discretion may release the arrestee upon his/her written promise to appear for trial.

8. TOWING OF DUI/DWI'S VEHICLE

8.1. Towing or Parking

- 8.1.1. If an officer arrests a DUI/DWI (adult) who was alone in the vehicle and who stops it in an unsafe or illegal location, or the vehicle is impeding or will impede traffic, the officer may move the vehicle, upon receiving permission from the arrestee, to a nearby legal parking area, and will ensure that it is locked.
- 8.1.2. If the arrestee refuses to grant permission or the officer chooses not to move the vehicle (for health or safety reasons), the vehicle will be towed pursuant to Department policies.
- 8.1.3. If the arrestee stops the vehicle in a safe and legal location, the officer may leave the vehicle parked and shall ensure the vehicle is locked and secure.
- 8.1.4. The officer can relinquish the keys to a sober adult, possessing a valid driver's license, with the arrestee's consent (unless the sober adult is the owner).
- 8.1.5. If the passengers do not meet the above conditions, the vehicle and keys will not be released and the vehicle will either be towed or parked and locked, with the officer retaining the keys.
 - 8.1.5.1. Arrangements should be made by the officer for alternative transportation for the passengers, with thought given to weather, location of arrest, age, sex, and physical condition(s) of the passengers.

9. ALCOHOL ENFORCEMENT COUNTERMEASURES PROGRAM

9.1. Analysis to Aid Enforcement

- 9.1.1. Monthly, the Crime Analyst publishes a synopsis of the DUI/DWI arrests occurring within the City.
- 9.1.2. When deemed appropriate, Commanders will be responsible for the assignment of personnel to patrol the areas listed in the synopsis during the course of normal patrol as a specific assignment.
- 9.1.3. The Department participates in the Drunk Driving Regional Campaigns held in the Washington Metropolitan area.

9.1.4. The Department will provide speakers for schools, churches, businesses, and community groups to talk with interested persons, demonstrate equipment, or make presentations involving educational or enforcement efforts and will make available literature, pamphlets, books, hand-outs and other items of interest, free of charge, to any interested citizen.