

## Impaired Driving Investigation

### 411.1 VERSION

Review Date	Effective Date	Approving Authority
02/06/19	07/09/18	Eric D. English, Chief of Police

### 411.2 POLICY AND PURPOSE

The Harrisonburg Police Department is committed to the safety of the roadways and the community and will pursue firm but fair enforcement of Virginia's impaired driving laws. This policy provides guidance in the detection and investigation of those driving under the influence (DUI) of alcohol or drugs.

### 411.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

### 411.4 DUI INVESTIGATION FORMS/GUIDES

The Traffic Supervisor will develop and maintain, in consultation with the Commonwealth's Attorney, forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. 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 (FSTs) 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 Virginia or another jurisdiction.

Officers should use the Harrisonburg Police Department Field Sobriety Evaluation.pdf form. If not used, then all information in the form needs to be in the narrative.

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### **411.5 FIELD TESTS**

When practicable, officers should utilize standardized FSTs when investigating violations of DUI laws.

#### **411.5.1 PRELIMINARY BREATH TESTS**

If the driver is suspected of DUI, a preliminary breath test (PBT), if available, shall be offered. The person shall be advised of his/her right to refuse the PBT. The person may observe the process of analysis and the results of the test, if requested (Virginia Code §18.2-267).

### **411.6 CHEMICAL TESTS**

A person, whether licensed in Virginia or not, implies consent under Virginia law to a chemical test or tests, and to providing the associated chemical sample if the person has been arrested for any of the following (or a similar ordinance) (Virginia Code §18.2-268.2; Virginia Code §46.2-341.26:2):

- (a) DUI (Virginia Code § 8.2-266)
- (b) Minor DUI (Virginia Code §18.2-266.1)
- (c) Driving after license forfeiture (Virginia Code §18.2-272)
- (d) Commercial vehicle DUI (Virginia Code §46.2-341.24; Virginia Code §46.2-341.31)

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.

The test shall be of the person's breath unless a breath test is unavailable or the person is physically unable to submit to a breath test, in which case a blood test shall be given. If there is reason to believe that the person was driving under the influence of both alcohol and drugs, or drugs alone, a blood test may be administered in addition to the breath test. Tests must be administered within three hours of the alleged offense (Virginia Code §18.2-268.2).

#### **411.6.1 STATUTORY NOTIFICATIONS**

The officer shall inform the person, prior to the test, that analysis of the reading and the results may be observed. If the equipment used produces a written printout, the person shall be given a copy (Virginia Code §18.2-268.2).

#### **411.6.2 BLOOD SAMPLES**

Only persons authorized by law to draw blood shall collect blood samples (Virginia Code §18.2-268.5). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

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The blood sample shall be packaged, marked, handled, stored and transported as required by the Department of Forensic Science.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she 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.

#### **411.7 REFUSALS**

When an arrestee refuses to provide a chemical sample, officers shall (Virginia Code §18.2-268.3; Virginia Code §46.2-341.26:3):

- (a) Advise the arrestee of the requirement to provide a sample (Virginia Code §18.2-268.2; Virginia Code §46.2-341.26:2).
  1. If the person was driving on private property, the officer should make reasonable attempts to obtain a voluntary chemical test sample.
- (b) Record the admonishment and the response when it is practicable.
- (c) Document the refusal in the appropriate report.

##### **411.7.1 STATUTORY NOTIFICATIONS UPON REFUSAL**

Upon refusal to submit to a chemical test, officers shall advise the person, using the Declaration and Acknowledgement of Refusal form, of the consequences of such refusal (Virginia Code §18.2-268.3; Virginia Code §46.2-341.26:3).

##### **411.7.2 OFFICER DECLARATIONS UNDER OATH**

The arresting officer shall execute the Declaration and Acknowledgement of Refusal form, under oath before a magistrate certifying (Virginia Code §18.2-268.3; Virginia Code §46.2-341.26:3):

- (a) The arrestee has refused to permit breath or blood samples to be taken for testing.
- (b) The officer has read the form to the arrestee.
- (c) The arrestee has still refused to provide a sample after being read the admonishment.
- (d) Whether the arrestee has any prior convictions within the last 10 years.

##### **411.7.3 BLOOD SAMPLE WITHOUT CONSENT**

A blood sample may be obtained from a person who refuses to submit to a chemical test when a search warrant has been obtained. This is generally accomplished to further a criminal investigation after consultation with the Commonwealth's Attorney.

#### **411.8 WARRANTLESS ARREST**

Officers may make a warrantless arrest within three hours of an alleged DUI offense, whether or not the offense was committed in the officer's presence (Virginia Code §19.2-81).

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#### **411.8.1 TRAFFIC CRASHES**

Virginia law allows officers to make an arrest of a DUI driver involved in an accident even though the accident was not committed in his/her presence (Virginia Code §19.2-81). Officers shall document relevant facts and circumstantial evidence that tends to show that the particular person was the driver of the vehicle.

#### **411.9 RECORDS UNIT RESPONSIBILITIES**

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

#### **411.10 ADMINISTRATIVE HEARINGS**

The Records Supervisor will ensure that all administrative license suspensions are entered into the Virginia Criminal Information Network (VCIN) as applicable.